

**ENDEAVOUR RESOURCES INC.**

as Purchaser

**ENDEAVOUR MINING CORPORATION**

as Parent

and

**LA MANCHA HOLDING S.ÀR.L.**

as Vendor

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**SHARE PURCHASE AGREEMENT**

**September 18, 2015**

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**STIKEMAN ELLIOTT LLP**

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## SHARE PURCHASE AGREEMENT

Share Purchase Agreement dated September 18, 2015 between Endeavour Resources Inc. ("**Purchaser**"), Endeavour Mining Corporation ("**Parent**") and La Mancha S.à.r.l. ("**Vendor**").

### WHEREAS:

- A. Purchaser wishes to acquire all of the issued and outstanding common shares of the Corporation from Vendor in consideration for the issuance by Parent to Vendor of the Consideration Shares (as hereinafter defined);
- B. Concurrently with the entering into of this Agreement, Vendor and Parent have entered into an investor rights agreement to provide for certain rights and restrictions in connection with the issuance by Parent to Vendor of the Consideration Shares pursuant to this Agreement;
- C. Concurrently with the entering into of this Agreement, Vendor has entered into lock-up agreement with the directors and executive officers of Parent pursuant to which, among other things, such Persons have agreed to vote in favour of the Share Issuance Resolution all of Parent Shares (as hereinafter defined) held by them, on the terms and subject to the conditions set forth in such lock-up agreement; and
- D. The Parties have entered into this Agreement to provide for the matters referred to in the foregoing recitals and for other matters relating to such transactions.

**THIS AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties covenant and agree as follows:

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

**"Acquisition Proposal"** means, other than the transactions contemplated by this Agreement, any offer, proposal, expression of interest or inquiry (written or oral) from any Person or group of Persons other than Vendor (or any affiliate of Vendor or any Person acting in concert with Vendor or any affiliate of Vendor) after the date of this Agreement relating to: (i) any sale or disposition (or any lease or other arrangement having the same economic effect as a sale), direct or indirect, of assets representing [redacted] or more of the consolidated assets or contributing [redacted] or more of the consolidated revenue or EBITDA of Parent and its subsidiaries or of [redacted] or more of the voting or equity securities of Parent or any of its subsidiaries (or rights or interests in such voting or equity securities); (ii) any take-over bid, exchange offer or other transaction that, if consummated, would result in such

Person or group of Persons beneficially owning [redacted] or more of any class of voting or equity securities of Parent or any of its subsidiaries; or (iii) any plan of arrangement, merger, amalgamation, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution, winding up involving Parent or any of its subsidiaries.

"**affiliate**" has the meaning specified in National Instrument 45-106 – *Prospectus and Registration Exemptions* of the Canadian Securities Administrators in effect on the date of this Agreement.

"**Agreement**" means this share purchase agreement.

"**Ancillary Agreements**" means all agreements, certificates and other instruments delivered or given pursuant to this Agreement.

"**ASX**" means the Australian Securities Exchange.

"**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person, including in the case of Parent, the TSX and the ASX.

"**Business**" means the business of exploring, extracting and producing gold.

"**Business Day**" means any day, other than a Saturday, a Sunday or a statutory or civic holiday in Vancouver, British Columbia, Toronto, Ontario, George Town, Grand Cayman, Paris, France, Luxembourg and Malta.

"**Cash**" means cash and cash equivalents.

"**CFPOA**" means *Corruption of Foreign Public Officials Act* (Canada).

"**Closing**" means the completion of the transaction of purchase and sale contemplated in this Agreement.

"**Closing Date**" means a date within 5 Business Days of the date of the Meeting, as determined by the Parties, or such earlier or later date as the Parties may agree in writing.

"**Closing Time**" means 10:00 a.m. or such earlier or later time on the Closing Date as the Parties may agree in writing.

"**Confidentiality Agreement**" means the mutual confidentiality agreement between Parent and Vendor dated April 30, 2015, as it may be amended.

"**Consideration Shares**" means an aggregate of 177,061,572 Parent Shares to be issued to Vendor in consideration for the acquisition by Purchaser of all of the issued and outstanding Corporation Shares.

**"Constituting Documents"** means the memorandum of association, articles of association, articles of incorporation, amalgamation, or continuation, by-laws, or other constitutive documents, as applicable, and all amendments thereto.

**"Contract"** means any agreement, contract, licence, undertaking, engagement or commitment of any nature, written or oral.

**"Corporation"** means La Mancha Cayman, an exempted company incorporated with limited liability in the Cayman Islands, all of the issued and outstanding Corporation Shares of which are owned by Vendor.

**"Corporation Financial Statements"** means: (i) the consolidated audited financial statements of the Corporation Subsidiaries for the year ended December 31, 2014, consisting of a balance sheet and the accompanying statements of income, retained earnings and changes in financial position for the year then ended and all notes to them, together with a report of the auditors, Deloitte, Chartered Accountants; and (ii) the unaudited financial statements for each of the Corporation Subsidiaries for the 6 months ended June 30, 2015, consisting of a balance sheet and the accompanying statements of income, retained earnings and changes in financial position.

**"Corporation Mineral Rights"** has the meaning specified in Section 3.1(m)(i).

**"Corporation Properties"** has the meaning specified in Section 3.1(m)(i).

**"Corporation Shares"** means ordinary shares of the Corporation with a par value of \$1.00 per share.

**"Corporation Subsidiaries"** means Société des Mines d'Ity S.A. and La Mancha Côte d'Ivoire, the respective jurisdictions of incorporation and ownership of which are set out in Schedule 1.1 of the Vendor Disclosure Letter.

**"Damages"** means any losses, liabilities, damages or expenses (including legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.

**"Direct Claim"** means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Person to make a claim for indemnification under this Agreement.

**"Employee Plans"** means any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of any corporation maintained, sponsored or funded by such corporation,

whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered under which any corporation may have any liability, contingent or otherwise.

**"Environmental Laws"** means all applicable Laws and agreements with Governmental Entities and all other statutory requirements relating to public health or the protection of the environment and all Authorizations issued pursuant to such Laws, agreements or statutory requirements.

**"Environmental Permits"** means all permits, licences, written authorizations, certificates, approvals, program participation requirements, sign-offs or registrations required by or available with or from any Governmental Entity under any Environmental Laws.

**"Expense Reimbursement Fee"** means \$900,000.

**"FCPA"** means the *Foreign Corrupt Practices Act of 1977*, of the United States.

**"GAAP"** means: (i) in respect of Parent, generally accepted accounting principles as set-out in the *CPA Canada Handbook – Accounting* for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis; and (ii) in respect of Vendor, International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

**"Governmental Entity"** means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"Key Regulatory Approvals"** means those sanctions, rulings, consents, orders, exemptions, permits and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of Governmental Entities set out in Schedule A to this Agreement.

**"Key Third Party Consents"** means those consents, approvals and notices required from any third party to proceed with the transactions contemplated by this Agreement set out in Schedule B to this Agreement.

**"Indemnified Person"** means a Person with indemnification rights or benefits under Section 10.3 or Section 10.4, or otherwise under this Agreement.



**"Indemnifying Party"** means a Party against which a claim may be made for indemnification under this Agreement, including pursuant to Article 10.

**"Interim Period"** means the period between the close of business on the date of this Agreement and the Closing Date.

**"Law"** means, with respect to any Person, any and all applicable law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign enacted, adopted promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices or protocols of any Governmental Entity, as amended.

**"Lien"** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation.

[redacted]

**"Matching Period"** has the meaning specified in Section 6.4(1)(d).

**"Meeting"** means the special meeting of Parent Shareholders to be held to approve the Share Issuance Resolution.

**"Meeting Circular"** means the management information circular to be delivered to the Parent Shareholders in respect of the Meeting.

**"NI 43-101"** means National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* of the Canadian Securities Administrators in effect on the date of this Agreement.

**"Notice"** has the meaning specified in Section 12.1.

**"Ordinary Course"** means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken prudently in the ordinary course of the normal day-to-day operations of the Person and having regard to the terms and spirit of the transactions contemplated by this Agreement.

**"Outside Date"** means February 28, 2016.

**"Parent"** means Endeavour Mining Corporation, an exempted company incorporated with limited liability in the Cayman Islands.

**"Parent and Purchaser Disclosure Letter"** means the disclosure letter dated the date of this Agreement and delivered by Purchaser and Parent to Vendor on the date hereof in connection with the execution of this Agreement.

**"Parent Board"** means the board of directors of Parent as constituted from time to time.

**"Parent CDIs"** means CHESS Depository Interests listed on ASX in respect of Parent Shares.

**"Parent Material Adverse Effect"** means any one or more changes, effects, events or occurrences that, individually or in the aggregate, is, or would reasonably be expected to be, material and adverse to the business, properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), capitalization, operations or results of operations of Parent and Parent Subsidiaries, taken as a whole, other than any change, effect, event or occurrence: (i) in or relating to general political, economic or financial conditions in Mali, Ghana, Burkina Faso and Côte d'Ivoire; (ii) in or relating to the state of securities markets in general, including any reduction in market indices; (iii) in or relating to currency exchange rates; (iv) in or relating to the industries in which such person operates in general or the market for gold in general; (v) in or relating to GAAP or regulatory accounting requirements; (vi) in or relating to any applicable Laws or any interpretation thereof by any Governmental Entity; or (vii) relating to a change in the market trading price of Parent Shares either (A) related to this Agreement or the announcement thereof; or (B) related to such a change in the market trading price primarily resulting from a change, effect, event or occurrence excluded from this definition of "Parent Material Adverse Effect" under subsections (i) to (vi) above; provided, however, that such effect referred to in subsections (ii) to (vi) above does not primarily relate to (or have the effect of primarily relating to) Parent or Parent Subsidiaries or disproportionately adversely affect Parent and the Parent Subsidiaries, taken as a whole, compared to other companies of similar size operating in the industry in which Parent and the Parent Subsidiaries operate or result from any change in Laws or in the interpretation, application or non-application of Laws by any Governmental Entity (including all related fiscal regimes) which results in any expropriation or other proceedings alleging illegality or irregularity of any material contract or license undertaken by Governmental Entities or suspension or revocation, or proposed or alleged suspension or revocation or allegation of illegality, of any authorization, consent, approval, license or material Contract with any Governmental Entity; and references in this Agreement to dollar amounts are not intended to be and shall not be deemed to be illustrative or interpretative for purposes of determining whether a "Parent Material Adverse Effect" has occurred.

**"Parent Mineral Rights"** has the meaning specified in Section 4.1(n)(i).

**"Parent Properties"** has the meaning specified in Section 4.1(n)(i).

**"Parent Public Documents"** means all documents or information filed on SEDAR or with the ASX by Parent under applicable Securities Laws since and including

January 1, 2015 to and including the date hereof (excluding any disclosures set forth in any section of Parent Public Documents entitled "Risk Factors" or "Forward-Looking Statements" or any other disclosures included in such filings to the extent that they are forward-looking, predictive or cautionary in nature).

**"Parent Shareholders"** means the holders of the issued and outstanding Parent Shares.

**"Parent Shares"** means ordinary shares of Parent with a par value of \$0.01 per share.

**"Parent Subsidiaries"** means Adamus Resources Ltd., Burkina Mining Company S.A., Agbaou Gold Operations S.A., Segala Mining Corporation S.A., Mines de Kofi S.A., Houndé Gold Operation S.A. and Nevsun Mali Exploration Limited S.A., being all of Parent's material subsidiaries.

**"Parent Termination Fee"** means \$1,500,000.

**"Parties"** means Parent, Purchaser, Vendor and any other Person who may become a party to this Agreement.

**"Person"** means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

**"Pre-Closing Reorganization"** means the pre-closing reorganization substantially as described in Schedule 1.1 of the Vendor Disclosure Letter.

**"Prior Royalties"** has the meaning specified in Schedule 1.1 of the Vendor Disclosure Letter.

**"Public Statement"** has the meaning specified in Section 12.3.

**"Purchased Corporations"** means, collectively, the Corporation and the Corporation Subsidiaries.

**"Purchased Shares"** means all of the issued and outstanding Corporation Shares.

**"Purchaser"** means Endeavour Resources Inc., an exempted company incorporated with limited liability in the Cayman Islands.

**"Securities Authorities"** means the British Columbia Securities Commission, the Australian Securities and Investments Commissions or any other applicable securities commissions or securities regulatory authority of a province or territory of Canada or Australia.

**"Securities Laws"** means the *Securities Act* (British Columbia), the *Corporations Act 2001* (Australia) and any other applicable securities Laws.

"SEDAR" has the meaning specified in Section 12.3.

**"Share Issuance Resolution"** means an ordinary resolution of the Parent Shareholders to be considered at the Meeting approving the issuance of the Consideration Shares to Vendor contemplated by this Agreement.

**"subsidiary"** has the meaning specified in National Instrument 45-106 – *Prospectus and Registration Exemptions* of the Canadian Securities Administrators in effect on the date of this Agreement.

**"Superior Proposal"** means any unsolicited *bona fide* written Acquisition Proposal from a Person who is an arm's length third party to acquire, directly or indirectly, all but not less than all of the outstanding Parent Shares or all or substantially all of the assets of Parent on a consolidated basis that: (a) complies with Securities Laws and did not result from or involve a breach of Article 6; (b) is reasonably capable of being completed without undue delay; (c) in respect of which it has been demonstrated to the satisfaction of the Parent Board, acting in good faith (after receipt of advice from its outside financial and legal advisors), that any required financing to complete such Acquisition Proposal is reasonably likely to be obtained; (d) is not subject to any due diligence or access condition; and (e) that the Parent Board determines, in its good faith judgment, after receiving the advice of its outside financial and legal advisors and after taking into account all of the terms and conditions of the Acquisition Proposal, including all legal, financial, regulatory and other aspects of such Acquisition Proposal and the party making such Acquisition Proposal, that such Acquisition Proposal would, if consummated in accordance with its terms, result in a transaction which is more favourable to Parent than the transactions contemplated by this Agreement (taking into account any proposal by Vendor to amend or supersede this Agreement pursuant to Section 6.4(2) and any other factors the Parent Board determines, acting reasonably, to be appropriate).

**"Superior Proposal Notice"** has the meaning specified in Section 6.4(1)(b).

**"Tax Act"** means the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.) c.1, as amended.

**"Taxes"** means: (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii);

(iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

**"Tax Returns"** means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and statements (including estimated tax returns and reports, withholding tax returns and reports, and information returns and reports) filed or required to be filed in respect of Taxes.

**"Third Party Claim"** means any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, against an Indemnified Person which entitles the Indemnified Person to make a claim for indemnification under this Agreement.

**"TSX"** means the Toronto Stock Exchange.

**"Vendor"** means La Mancha Holding S.à.r.l., a corporation incorporated under the laws of Luxembourg.

**"Vendor Disclosure Letter"** means the disclosure letter dated the date of this Agreement and delivered by Vendor to Purchaser and Parent on the date hereof in connection with the execution of this Agreement.

**"Vendor Material Adverse Effect"** means any one or more changes, effects, events or occurrences that, individually or in the aggregate, is, or would reasonably be expected to be, material and adverse to the business, properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), capitalization, operations or results of operations of Vendor and the Purchased Corporations, taken as a whole, other than any change, effect, event or occurrence: (i) in or relating to general political, economic or financial conditions in Mali, Burkina Faso and Côte d'Ivoire; (ii) in or relating to the state of securities markets in general, including any reduction in market indices; (iii) in or relating to currency exchange rates; (iv) in or relating to the industries in which such person operates in general or the market for gold in general; (v) in or relating to GAAP or regulatory accounting requirements; or (vi) in or relating to any applicable Laws or any interpretation thereof by any Governmental Entity; provided, however, that such effect referred to in subsections (ii) to (vi) above does not primarily relate to (or have the effect of primarily relating to) Vendor or the Purchased Corporations, or disproportionately adversely affect Vendor and the Purchased Corporations, taken as a whole, compared to other companies of similar size operating in the industry in which Vendor and the Purchased Corporations operate or result from any change in Laws or in the interpretation, application or non-application of Laws by any Governmental Entity (including all related fiscal regimes) which results in any expropriation or other proceedings alleging illegality or irregularity of any material contract or license undertaken by Governmental Entities or suspension or revocation, or proposed or

alleged suspension or revocation or allegation of illegality, of any authorization, consent, approval, license or material Contract with any Governmental Entity; and references in this Agreement to dollar amounts are not intended to be and shall not be deemed to be illustrative or interpretative for purposes of determining whether an "Vendor Material Adverse Effect" has occurred.

**"Vendor Nominees"** means two nominees of Vendor to be put forward by Parent for election to the Parent Board at the Meeting, which appointment shall be conditional upon and effective as at the completion of the purchase and sale of the Purchased Shares contemplated by this Agreement.

**"Vendor Termination Fee"** means \$5,000,000.

**"Vendor VAT Receivable"** means the approximate \$2,000,000 value added tax balance owing to the Corporation Subsidiaries by the Governmental Entity in Côte d'Ivoire in respect of the third and fourth fiscal quarters of 2014.

**"Villeranges Permit"** means the exclusive exploration permit granted by Ministerial Order of the French Republic on November 18, 2013 to a subsidiary or affiliate of Vendor for the research of gold, copper, silver, zinc, antimony, tin, tungsten and related substances called the "Villeranges" permit on a surface located on parts of the following territories: Auge, Bord-Saint-Georges, Chambon-sur-Voueize, Lépaud, Lussat, Sannat and Tardes municipalities in the Creuse County (*département*).

**"Working Capital"** means the amount by which the current assets of the Purchased Corporations excluding Cash and the Vendor VAT Receivable exceed the current liabilities of the Purchased Corporations.

## **Section 1.2 Certain Rules of Interpretation,**

In this Agreement, unless otherwise specified:

- (a) **Gender and Number.** Any reference in this Agreement or any Ancillary Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (b) **Headings, etc.** The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (c) **Currency.** All references in this Agreement or any Ancillary Agreement to dollars, or to \$ are expressed in United States currency unless otherwise specifically indicated.
- (d) **Certain Phrases, etc.** In this Agreement and any Ancillary Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the

aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Agreement. The term "made available" means (i) copies of the subject materials were included in Parent's or Vendor's data room, as the case may be, or (ii) copies of the subject materials were provided to Purchaser and Parent or Vendor, as the case may be.

- (e) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. on the last day of the prior, if the last day of the period is a Business Day, or at 4:30 p.m. on the next Business Day if the last day of the period is not a Business Day.
- (f) **Time References.** References to time are to local time George Town, Cayman Islands (GMT - 5).
- (g) **Knowledge.** References to the knowledge of Parent are references to the actual knowledge of Morgan Carroll, Ota Hally and Richard Thomas and references to the knowledge of Vendor are references to the actual knowledge of Sebastien de Montessus, Amr El Adawy, Vincent Benoit and Pascal Bernasconi.
- (h) **Capitalized Terms.** All capitalized terms used in any Schedule or in either the Parent and Purchaser Disclosure Letter or the Vendor Disclosure Letter have the meanings ascribed to them in this Agreement.
- (i) **Accounting Terms.** All accounting terms not specifically defined in this Agreement are to be interpreted in accordance with GAAP.
- (j) **Schedules and Disclosure Letters.** The schedules attached to this Agreement and each of the Parent and Purchaser Disclosure Letter and the Vendor Disclosure Letter form an integral part of this Agreement for all purposes of it. Each of the Parent and Purchaser Disclosure Letter and the Vendor Disclosure Letter itself and all information contained in it is confidential information and may not be disclosed unless: (i) it is required to be disclosed pursuant to applicable Laws unless such Laws permits the Parties to refrain from disclosing the information for confidentiality or other purposes or; (ii) a Party needs to disclose it in order to enforce or exercise its rights under this Agreement or any Ancillary Agreement.
- (k) **References to Persons and Agreements.** Any reference in this Agreement or any Ancillary Agreement to a Person includes its successors and permitted assigns. Except as otherwise provided in this Agreement or any Ancillary Agreement, the term "Agreement" and any reference in this Agreement to this Agreement, any Ancillary Agreement or any other agreement or document includes, and is a reference to, this Agreement, such Ancillary Agreement or such other agreement or document as it may

have been, or may from time to time be amended, restated, replaced, supplemented or novated and includes all schedules to it.

- (l) **Statutes.** Any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.
- (m) **Subsidiaries.** To the extent any covenants or agreements relate, directly or indirectly, to a subsidiary of either Party, each such provision shall be construed as a covenant by such Party to cause (to the fullest extent to which it is legally capable) such subsidiary to perform the required action.

## **ARTICLE 2 PURCHASED SHARES**

### **Section 2.1 Purchase and Sale.**

Subject to the terms and conditions of this Agreement, on the Closing Date, Vendor agrees to sell, assign and transfer the Purchased Shares to Purchaser and Purchaser agrees to purchase the Purchased Shares from Vendor in consideration for the issuance by Parent of the Consideration Shares to Vendor.

### **Section 2.2 Parent Meeting.**

Subject to the terms hereof, Parent covenants and agrees in favour of Vendor that Parent shall:

- (a) convene and conduct the Meeting in accordance with Parent's Constatting Documents and applicable Laws as soon as reasonably practicable, and in any event no later than December 31, 2015, and not adjourn, postpone or cancel (or propose for adjournment, postponement or cancellation) the Meeting without Vendor's prior written consent, not to be unreasonably withheld, except in the case of an adjournment, as required for quorum purposes, or by applicable Law;
- (b) not propose or submit for consideration at the Meeting any special business other than the Share Issuance Resolution without Vendor's prior written consent, not to be unreasonably withheld;
- (c) use commercially reasonable efforts to solicit proxies in favour of the approval of the Share Issuance Resolution and against any resolution submitted by any Parent Shareholder that is inconsistent with the Share Issuance Resolution including, at Parent's discretion or if so requested by Vendor, acting reasonably, and at Vendor's expense, using dealer and proxy solicitation services firms and cooperating with any Persons engaged by Vendor to solicit proxies in favour of the approval of the Share Issuance Resolution;



- (d) provide Vendor with copies of or access to information regarding the Meeting generated by any dealer or proxy solicitation services firm, as requested from time to time by Vendor;
- (e) consult with Vendor and Vendor's counsel in setting the date of the Meeting and allow Vendor's representatives and counsel to attend the Meeting.
- (f) promptly advise Vendor, at such times as Vendor may reasonably request, including, as applicable, on a daily basis on each of the last ten (10) Business Days prior to the date of the Meeting, as to the aggregate tally of the proxies (for greater certainty, specifying votes "for" and votes "against" the Share Issuance Resolution) received by Parent from the Parent Shareholders in respect of the Share Issuance Resolution; and
- (g) promptly advise Vendor of any communication (written or oral) from any Parent Shareholder in opposition to any of the Share Issuance Resolution and written communications sent by or on behalf of Parent to any Parent Shareholder in response thereto.

### **Section 2.3 Meeting Circular.**

- (a) Parent shall, as promptly as reasonably practicable, prepare and complete in consultation with Vendor the Meeting Circular together with any other document required in connection with the Meeting in compliance with applicable Laws and file the Meeting Circular on a timely basis, and in any event on or before November 30, 2015, in all jurisdictions where the same is required to be filed and mail the same in accordance with all applicable Laws, in all jurisdictions where the same is required.
- (b) Parent shall ensure that the Meeting Circular complies in all material respects with applicable Laws, does not contain any misrepresentation (other than with respect to written information provided by Vendor for inclusion in the Meeting Circular) and, without limiting the generality of the foregoing, that the Meeting Circular contains: (i) sufficient detail to enable reasonable Parent Shareholders to form a reasoned judgment concerning the matters to be approved pursuant to the Share Issuance Resolution; (ii) a statement that the Parent Board has unanimously, after receiving legal and financial advice, determined that the Share Issuance Resolution is in the best interests of Parent and recommends that the Parent Shareholders vote in favour of the Share Issuance Resolution; and (iii) a statement that each director and executive officer of Parent who owns Parent Shares intends to vote all of such Parent Shares in favour of the Share Issuance Resolution.
- (c) As soon as reasonably practicable following the date of this Agreement, Parent shall convene a meeting or circulate a consent resolution of the Parent Board to approve the Meeting Circular.

- (d) Vendor will furnish to Parent all such information regarding Vendor and the Purchased Corporations as may be reasonably required by Parent in the preparation of the Meeting Circular and other documents related thereto and shall ensure that such information does not contain any misrepresentation.
- (e) Vendor and its legal counsel shall be given a reasonable opportunity to review and comment on the Meeting Circular, prior to the Meeting Circular being printed and mailed to Parent Shareholders, and reasonable consideration shall be given to any comments made by Vendor and its counsel, provided that all information relating to Vendor and the Purchased Corporations included in the Meeting Circular shall be in form and content satisfactory to Vendor, acting reasonably. Parent shall provide Vendor with a final copy of the Meeting Circular prior to mailing to the Parent Shareholders.
- (f) Parent shall provide Vendor with copies of or access to information regarding the Meeting generated by any dealer or proxy solicitation services firm, as requested from time to time by Vendor.
- (g) Parent and Vendor shall each promptly notify the other if at any time before the Closing Date, it becomes aware of any error or omission in the information included in the Meeting Circular that requires an amendment or supplement to the Meeting Circular, and the Parties shall co-operate in the preparation of any amendment or supplement to the Meeting Circular, as required or appropriate, and Parent shall promptly mail or otherwise publicly disseminate any amendment or supplement to the Meeting Circular to Parent Shareholders and file the same with the Securities Authorities and as otherwise required.

#### **Section 2.4 Preparation of Filings**

Each of the Parties shall co-operate in the preparation of any application for the Key Regulatory Approvals and any other orders, registrations, consents, filings, rulings, exemptions, no-action letters and approvals and the preparation of any documents reasonably deemed by either of them to be necessary to discharge its respective obligations or otherwise advisable under applicable Laws in connection with this Agreement.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF VENDOR**

#### **Section 3.1 Representations and Warranties of Vendor.**

Except as disclosed in the Vendor Disclosure Letter (which shall make reference to the applicable section, subsection, paragraph or subparagraph (and to the relevant representation if there is more than one in any section, subsection, paragraph or subparagraph) below in respect of which such qualification is being made) and as is contemplated in the Pre-Closing Reorganization, Vendor hereby represents and warrants to

Purchaser and Parent as follows, and acknowledges that Purchaser and Parent are relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) **Incorporation and Qualification.** Vendor is a corporation incorporated and existing under the laws of Luxembourg and has the corporate power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. Vendor is duly qualified to carry on business and is in good standing in all material respects in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary.
- (b) **Corporate Authorization.** Vendor has the requisite corporate power and authority to enter into this Agreement and any Ancillary Agreement to which it is party, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any such Ancillary Agreement and the consummation by Vendor of the transactions contemplated by this Agreement and any such Ancillary Agreement have been duly authorized by Vendor's board of managers (conseil de gérance), and no other corporate proceedings on the part of Vendor are necessary to authorize this Agreement or any Ancillary Agreement. This Agreement has been and any Ancillary Agreement to which Vendor is a party will be duly executed and delivered by Vendor, and will be enforceable by Purchaser and Parent against Vendor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency and other applicable Laws affecting the enforcement of creditors' rights generally and subject to the qualification that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (c) **No Conflict; Required Filings and Consent.** The execution and delivery by Vendor of this Agreement and any Ancillary Agreement to which it is party and the performance by it of its obligations hereunder and thereunder and the completion of the transactions contemplated by this Agreement will not violate, conflict with or result in a breach of any provision of the Constating Documents of Vendor, or those of any of the Corporation or any Corporation Subsidiary will not: (i) violate, conflict with or result in a breach of: (A) any agreement, contract, indenture, deed of trust, mortgage, bond, instrument, Authorization, license or permit to which Vendor, the Corporation or any Corporation Subsidiary is a party or by which Vendor, the Corporation or any of the Corporation Subsidiaries is bound; or (B) any Law to which Vendor, the Corporation or any Corporation Subsidiary is subject or by which Vendor, the Corporation or any Corporation Subsidiary is bound; (ii) give rise to any right of termination, or the acceleration of any indebtedness, under any such agreement, contract, indenture, Authorization, deed of trust, mortgage, bond, instrument, license or permit; or (iii) give rise to any rights of first

refusal or rights of first offer, trigger any change in control or influence provisions or any restriction or limitation under any such agreement, contract, indenture, Authorization, deed of trust, mortgage, bond, instrument, license or permit, or result in the imposition of any material Lien upon any of Vendor's assets or the assets of the Corporation or any Corporation Subsidiary. No Authorization, consent or approval of, or filing with, any Governmental Entity or any court or other authority is necessary on the part of Vendor, the Corporation or any Corporation Subsidiaries for the consummation by Vendor of its obligations in connection with the transactions contemplated by this Agreement or for the completion of the transactions not to cause or result in any material loss of any rights or assets or any interest therein held by Vendor, the Corporation or any Corporation Subsidiary in any material properties. There are no consents, approvals and notices required from any third party under any material Contracts of the Purchased Corporations in order for Vendor and the Purchased Corporations to proceed with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement.

- (d) **The Corporation and the Corporation Subsidiaries.** The Corporation and each Corporation Subsidiary is duly organized and is validly existing under the Laws of its jurisdiction of incorporation or organization, has full corporate power and authority to own its assets and conduct its business as now owned and conducted by it and is duly qualified to carry on business in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary. Vendor beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of the Corporation and each Corporation Subsidiaries. All of the outstanding shares in the capital of each of the Corporation and the Corporation Subsidiaries owned directly or indirectly by Vendor is: (a) validly issued and fully-paid and all such shares are owned free and clear of all material Liens of any kind or nature whatsoever; and (b) are free of any other material restrictions including any restriction on the right to vote, sell or otherwise dispose of shares. The Corporation does not hold any material equity interests in any Subsidiary other than (A) its interests in the Corporation Subsidiaries; and (B) as otherwise disclosed in Vendor Disclosure Letter. True and complete copies of the Constating Documents of the Corporation and each Corporation Subsidiary have been delivered or made available to Purchaser and Parent, and neither Vendor, the Corporation nor the Corporation Subsidiaries has taken any action to amend or supersede such documents.
- (e) **Compliance with Laws.**
  - (i) The operations of Vendor and the Purchased Corporations have been and are now conducted in compliance with all applicable Laws of each applicable jurisdiction, the Laws of which have been and are

now applicable to the operations of Vendor and the Purchased Corporations and none of Vendor or any of the Purchased Corporations has received any notice of any alleged violation of any such Laws, other than non-compliance or violations which, individually or in the aggregate, would not have a Vendor Material Adverse Effect.

- (ii) None of Vendor, the Corporation, or any of the Corporation Subsidiaries is in conflict with, or in default (including cross defaults) under or in violation of: (a) its Constating Documents; or (b) any agreement or understanding to which it or by which any of its properties or assets is bound or affected.
- (f) **Authorizations.** The Corporation and the Corporation Subsidiaries have obtained all Authorizations necessary for the ownership, operation, development, maintenance, or use of the material assets of the Corporation and the Corporation Subsidiaries or otherwise in connection with the material business or operations of the Corporation and the Corporation Subsidiaries as currently conducted and such Authorizations are in full force and effect. The Corporation and the Corporation Subsidiaries have fully complied with and are in compliance in all material respects with all Authorizations. There is no action, investigation or proceeding pending or, to the knowledge of Vendor, threatened regarding any of the Authorizations. None of the Corporation or any of the Corporation Subsidiaries has received any notice, whether written or oral, of revocation or non-renewal of any such Authorizations, or of any intention of any Person to revoke or refuse to renew any of such Authorizations and, to the knowledge of Vendor, all such Authorizations continue to be effective in order for the Corporation and the Corporation Subsidiaries to continue to conduct their respective businesses as they are currently being conducted. No Person other than the Corporation or a Corporation Subsidiary thereof and the Government Entity which has granted or otherwise has authority on such Authorizations owns or has any proprietary, financial or other interest (direct or indirect) in any of the material Authorizations.
- (g) **Capitalization.**
  - (i) The authorized share capital of the Corporation is \$50,000 divided into 50,000 Corporation Shares of \$1.00 par value each. As at the date of this Agreement, there is 1 Corporation Share validly issued and outstanding as fully-paid and non-assessable share of the Corporation. There are no options, warrants, conversion privileges, calls or other rights, shareholder rights plans, agreements, arrangements, commitments, or obligations of the Corporation or any of the Corporation Subsidiaries to issue or sell any shares of the Corporation or of any of the Corporation Subsidiaries or securities or obligations of any kind convertible into, exchangeable for or

otherwise carrying the right or obligation to acquire any shares of the Corporation or any of the Corporation Subsidiaries, and there are no outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments of the Corporation or any Corporation Subsidiary based upon the book value, income or any other attribute of the Corporation or any of the Corporation Subsidiaries; and (y) no Person is entitled to any pre-emptive or other similar right granted by the Corporation or any of the Corporation Subsidiaries.

- (ii) There are no outstanding contractual obligations of the Corporation or any of the Corporation Subsidiaries to repurchase, redeem or otherwise acquire any the Corporation Shares or any shares of any of the Corporation Subsidiaries.
- (iii) No order ceasing or suspending trading in securities of the Corporation nor prohibiting the sale of such securities has been issued and is outstanding against Vendor.
- (h) **No Other Agreements to Purchase.** Except for Purchaser's right under this Agreement, no Person has any written or oral agreement, option or warrant or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for (i) the purchase or acquisition from Vendor of any of the Purchased Shares, or from any of the Corporation or any Corporation Subsidiary of any securities issued by the Corporation or any Corporation Subsidiary, (ii) the purchase, subscription, allotment or issuance of any of the unissued shares or other securities of the Corporation or any Corporation Subsidiary; or (iii) any interest in any Corporation Property or Corporation Mineral Right.
- (i) **Shareholder and Similar Agreements.** Neither the Corporation, any Corporation Subsidiary nor Vendor in respect of the Corporation nor the Corporation Subsidiaries is party to any shareholder, pooling, voting trust or other similar agreement relating to the issued and outstanding shares in the capital of Vendor, the Corporation or any Corporation Subsidiary.
- (j) **Title to Purchased Shares.** The Purchased Shares are owned by Vendor as the registered and beneficial owner with a good title, free and clear of all Liens other than those restrictions on transfer, if any, contained in the Constatting Documents of the Corporation. Upon completion of the transaction contemplated by this Agreement, Purchaser will have good and valid title to Purchased Shares, free and clear of all Liens other than: (i) those restrictions on transfer, if any, contained in the Constatting Documents of the Corporation; and (ii) Liens granted by Purchaser.
- (k) **Financial Statements.** The Corporation Financial Statements have been, and the financial statements of the Corporation which have been prepared by the Corporation in respect of any subsequent periods prior to the

Closing Date will be, prepared in accordance with GAAP applied on a basis consistent with prior periods (except in the case of a change in accounting principles) and all applicable Laws and present fairly, in all material respects, the consolidated financial condition and results of operations of the Corporation and the Corporation Subsidiaries as of the respective dates thereof and its results of operations and cash flows for the respective periods covered thereby (except as may be indicated expressly in the notes thereto). There are no outstanding loans made by the Corporation or any Corporation Subsidiary to any executive officer or director of the Corporation.

- (l) **Undisclosed Liabilities.** Neither the Corporation nor any Corporation Subsidiary has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, except for: (a) liabilities and obligations that are specifically presented in the Corporation Financial Statements or disclosed in the notes thereto; or (b) liabilities and obligations incurred in the Ordinary Course since June 30, 2015, that are not and would not, individually or in the aggregate with all other liabilities and obligations of the Purchased Corporations (other than those disclosed in the Corporation Financial Statements), reasonably be expected to have an adverse financial impact in excess of \$1,000,000 on the Corporation and the Corporation Subsidiaries collectively or, as a consequence of the consummation of the transactions contemplated by this Agreement, have an adverse financial impact in excess of \$1,000,000 on the Corporation and the Corporation Subsidiaries collectively. Without limiting the foregoing, the Corporation Financial Statements reflects reasonable reserves in accordance with GAAP for contingent liabilities relating to pending litigation and other contingent obligations of the Purchased Corporations.
- (m) **The Corporation Properties and the Corporation Mineral Rights.**
  - (i) All of Corporation's and Corporation Subsidiaries' real properties (collectively, the "**Corporation Properties**") and all of Corporation's and the Corporation Subsidiaries' mineral interests and rights (including any material claims, concessions, exploration licenses, exploitation licenses, prospecting permits, mining leases and mining rights, in each case, either existing under contract, by operation of Law or otherwise) (collectively, the "**Corporation Mineral Rights**"), are accurately set forth in Schedule 3.1(m). Other than the Corporation Properties and Corporation Mineral Rights set out in Schedule 3.1(m), neither Corporation nor Corporation Subsidiaries, owns or has any interest in any material real property or any material mineral interests and rights.
  - (ii) Corporation or a Corporation Subsidiary is the sole legal and beneficial owner of all right, title and interest in and to the

Corporation Properties and Corporation Mineral Rights, free and clear of any material Liens.

- (iii) All of Corporation Mineral Rights have been properly located and recorded in compliance with applicable Laws and are comprised of valid and subsisting mineral claims.
- (iv) All of the Corporation Properties and Corporation Mineral Rights are in good standing under applicable Laws in all material respects and all work required to be performed and filed in respect thereof has been performed and filed, all Taxes, rentals, fees, expenditures and other payments in respect thereof have been paid or incurred and all filings in respect thereof have been made.
- (v) There is no material adverse claim against or challenge to the title to or ownership of any Corporation Properties or any of Corporation Mineral Rights.
- (vi) Corporation or a Corporation Subsidiary has the exclusive right to deal with all of the Corporation Properties and all of Corporation Mineral Rights.
- (vii) No Person other than Corporation and the Corporation Subsidiaries has any interest in any of the Corporation Properties or any of Corporation Mineral Rights or the production or profits therefrom or any royalty in respect thereof or any right to acquire any such interest.
- (viii) There are no back-in rights, earn-in rights, rights of first refusal or similar provisions or rights which would affect Corporation's or a Corporation Subsidiary's interest in any of the Corporation Properties or any of Corporation Mineral Rights.
- (ix) There are no material restrictions on the ability of Corporation and the Corporation Subsidiaries to use, transfer or exploit any of the Corporation Properties or any of Corporation Mineral Rights, except pursuant to the applicable Law.
- (x) Neither Corporation nor any of Corporation Subsidiaries has received any notice, whether written or oral, from any Governmental Entity of any revocation or intention to (i) revoke any interest of Corporation or a Corporation Subsidiary in any of the Corporation Properties or any of Corporation Mineral Rights; (ii) require modifications to the terms of existing contractual arrangements with such Governmental Entities in relation to Corporation Mineral Rights, or (iii) not to renew any such interest in accordance with applicable Law.
- (xi) Corporation and the Corporation Subsidiaries have all surface rights, including fee simple estates, leases, easements, rights of way and



permits or licenses for operations from landowners or Governmental Entities permitting the use of land by Corporation and the Corporation Subsidiaries, and mineral interests that are required to exploit the development potential of Corporation Properties and Corporation Mineral Rights on or before the date hereof and no third party or group holds any such rights that would be required by Corporation to develop Corporation Properties or any of Corporation Mineral Rights on or before the date hereof.

- (xii) All mines located in or on the lands of Corporation or any of Corporation Subsidiaries, or lands pooled or unitized therewith, which have been abandoned by Corporation or any of Corporation Subsidiaries, have been abandoned in accordance with good mining practices and in material compliance with all applicable Laws, and all future abandonment, remediation and reclamation obligations known to Corporation as of the date hereof have been accurately set Schedule 3.1(m) to the Vendor Disclosure Letter without misrepresentation.
- (n) **Mineral Reserves and Resources.** The proven and probable mineral reserves and measured, indicated and inferred mineral resources for the Corporation Mineral Properties, were prepared in all material respects in accordance with sound mining, engineering, geoscience and other applicable industry standards and practices, and in all material respects in accordance with all applicable Laws, including the requirements of NI 43-101.
- (o) **Operational Matters.** Except as would not, individually or in the aggregate, be reasonably expected to have an adverse financial impact in excess of \$1,000,000 on the Corporation or the Corporation Subsidiaries, collectively:
  - (i) all rentals, royalties, overriding royalty interests, production payments, net profits, interest burdens, payments and obligations due and payable, or performable, as the case may be, on or prior to the date hereof under, with respect to, or on account of, any direct or indirect assets of the Corporation, the Corporation Subsidiaries and its material joint ventures, have been: (A) duly paid or accrued; (B) duly performed; or (C) accrued prior to the date hereof; and
  - (ii) all costs, expenses, and liabilities payable on or prior to the date hereof under the terms of any contracts and agreements to which the Corporation or any Corporation Subsidiary or material joint ventures is directly or indirectly bound have been properly and timely paid, except for such expenses that are being currently paid prior to delinquency in the Ordinary Course.
- (p) **Employment Matters.**

- (i) Other than as disclosed in the Vendor Disclosure Letter, neither the Corporation nor any Corporation Subsidiary has entered into any written or oral agreement or understanding providing for severance or termination payments to any director, officer or employee in connection with the termination of their position or their employment as a direct result of a change in control of the Corporation.
  - (ii) Neither Vendor, the Corporation nor any Corporation Subsidiary: (i) is a party to any collective bargaining agreement; or (ii) is subject to any application for certification or, to the knowledge of Vendor, threatened or apparent union-organizing campaigns for employees not covered under a collective bargaining agreement. To the knowledge of Vendor, no fact or event exists that is likely to give rise to a change in the representation subsection on or before the Closing Date.
  - (iii) Neither the Corporation nor any Corporation Subsidiary is subject to any material claim for wrongful dismissal, constructive dismissal or any other tort claim, actual or, to the knowledge of the Corporation, threatened, or any litigation actual, or to the knowledge of the Corporation, threatened, relating to employment or termination of employment of employees or independent contractors. To the knowledge of Vendor, no material labour strike, lock-out, slowdown or work stoppage is pending or threatened against or directly affecting the Corporation or any Corporation Subsidiary.
  - (iv) the Corporation and the Corporation Subsidiaries have operated in accordance with all applicable Laws with respect to employment and labour, including employment and labour standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights, labour relations and privacy and there are no current, pending, or to the knowledge of the Corporation, threatened material proceedings before any board or tribunal with respect to any of the areas listed herein.
- (q) **Absence of Certain Changes or Events.**

Since December 31, 2014:

- (i) the Corporation and the Corporation Subsidiaries have conducted their respective businesses only in the Ordinary Course;
- (ii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) except as disclosed in the unaudited financial statements for the Corporation Subsidiaries for the six-month period ended June 30, 2015 and other than in the Ordinary Course since then;

- (iii) there has not been any event, circumstance or occurrence which has had or is reasonably likely to give rise to a Vendor Material Adverse Effect;
  - (iv) there has not been any redemption, repurchase or other acquisition of the Corporation Shares by the Corporation, or any declaration, setting aside or payment of any dividend or other distribution (whether in cash, shares or property) with respect to the Corporation Shares;
  - (v) there has not been a material change in the level of accounts receivable or payable, inventories or employees, other than those changes in the Ordinary Course;
  - (vi) there has not been any entering into, or an amendment of, any material Contract other than in the Ordinary Course;
  - (vii) there has not been any satisfaction or settlement of any material claims or material liabilities that were not reflected in the Corporation's audited financial statements, other than the settlement of claims or liabilities incurred in the Ordinary Course; and
  - (viii) except for Ordinary Course adjustments, there has not been any increase in the salary, bonus, or other remuneration payable to any officers or senior or executive officers of the Corporation or any Corporation Subsidiary.
- (r) **Litigation.** There is no claim, action, proceeding or investigation pending or, to the knowledge of the Corporation, threatened against or relating to the Corporation or any of the Corporation Subsidiaries, the business of the Corporation or any of the Corporation Subsidiaries or affecting any of their properties, assets, before or by any Governmental Entity which, if adversely determined, would have, or reasonably could be expected to have, a Vendor Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement, nor to knowledge of the Corporation are there any events or circumstances which could reasonably be expected to give rise to any such claim, action, proceeding or investigation; provided, however, that the representation in this subsection shall not apply to claims, actions, proceedings, or investigations which may arise after the date of this Agreement. Neither Vendor, the Corporation nor any of the Corporation Subsidiaries is subject to any outstanding order, writ, injunction or decree which has had or is reasonably likely to have a Vendor Material Adverse Effect or which would prevent or materially delay consummation of the transactions contemplated by this Agreement.
- (s) **Taxes.**

- (i) Each of Vendor, the Corporation and the Corporation Subsidiaries has duly and in a timely manner made or prepared all Tax Returns required to be made or prepared by it, and duly and in a timely manner filed all Tax Returns required to be filed by it with the appropriate Governmental Entity, such Tax Returns were complete and correct in all material respects and Vendor and each of Vendor, the Corporation and the Corporation Subsidiaries has paid all Taxes, including installments on account of Taxes for the current year required by applicable Law, which are due and payable by it whether or not assessed by the appropriate Governmental Entity and Vendor has provided adequate accruals in accordance with GAAP in the most recently published financial statements of Vendor for any Taxes of Vendor, the Corporation and each of the Corporation Subsidiaries for the period covered by such financial statements that have not been paid whether or not shown as being due on any Tax Returns. Since such publication date, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the Ordinary Course. None of Vendor, the Corporation or any Corporation Subsidiary currently is the beneficiary of any extension of time within which to file any Tax Returns.
- (ii) Each of Vendor, the Corporation and the Corporation Subsidiaries has duly and timely withheld all material Taxes and other amounts required by Law to be withheld by it (including material Taxes and other amounts required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the benefit of any Person) and has duly and timely remitted to the appropriate Governmental Entity such Taxes or other amounts required by Law to be remitted by it.
- (iii) Each of Vendor, the Corporation and the Corporation Subsidiaries has duly and timely collected all amounts on account of any sales, use or transfer Taxes, including goods and services, harmonized sales, provincial and territorial taxes and state and local taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Entity such amounts required by Law to be remitted by it.
- (iv) None of Vendor nor any of the Corporation or the Corporation Subsidiaries has made, prepared and/or filed any elections, designations or similar filings relating to Taxes or entered into any agreement or other arrangement in respect of Taxes or Tax Returns that has effect for any period ending after the Closing Date.
- (v) There are no proceedings, investigations, audits or claims now pending or threatened against Vendor, the Corporation or any of the

Corporation Subsidiaries in respect of any Taxes, there are no matters under discussion, audit or appeal with any Governmental Entity relating to Taxes and neither Vendor, the Corporation nor any of the Corporation Subsidiaries have waived or extended any statutory limitation period in respect of Taxes.

- (vi) None of Vendor, the Corporation or Corporation Subsidiaries has acquired property from a non-arm's length Person for consideration the value of which is less than fair market value of the property.
- (vii) Neither Vendor, the Corporation, nor any Corporation Subsidiary is a party to or bound by any Tax allocation or sharing agreement or has any liability for the Taxes of any Person other than Vendor, the Corporation or a Corporation Subsidiary.
- (viii) Vendor has made available to Purchaser and Parent copies of all Tax Returns for the years 2014, 2013 and 2012 and all written communication to or from any Governmental Entity and relating to the Taxes of any of Vendor and the Corporation Subsidiaries, to the extent relating to periods or events in respect of which any Governmental Entity may by Law assess or otherwise impose any such tax on Vendor or any of the Corporation Subsidiaries.
- (ix) For any relevant Tax purposes:
  - (A) Vendor is solely resident in Luxembourg; and
  - (B) Each of the Corporation Subsidiaries is resident in the jurisdiction in which it was formed, and is not resident in any other country.
- (x) There are no Liens for Taxes upon any properties or assets of Vendor, the Corporation or any of the Corporation Subsidiaries (other than Liens relating to Taxes not yet due and payable and for which adequate reserves have been recorded on Vendor Balance Sheet.
- (t) **Books and Records.** The corporate records and minute books of the Corporation and the Corporation Subsidiaries have been maintained in accordance with all applicable Laws, and the minute books of the Corporation and the Corporation Subsidiaries as provided to Purchaser and Parent are complete and accurate in all material respects. The corporate minute books for the Corporation and the Corporation Subsidiaries contain minutes of all meetings and resolutions of the directors and securityholders held. The financial books and records and accounts of the Corporation and the Corporation Subsidiaries in all material respects: (a) have been maintained in accordance with good business practices and in accordance with GAAP and with the accounting principles generally accepted in the country of domicile of each such entity, on a basis consistent with prior

years (except in the case of a change in accounting principles for such jurisdiction); (b) are stated in reasonable detail and, in the case of the Corporation Subsidiaries, during the period of time when owned by Corporation, accurately and fairly reflect the transactions and dispositions of assets of the Corporation and the Corporation Subsidiaries; and (c) in the case of the Corporation Subsidiaries, during the period of time when owned by Corporation Subsidiaries, accurately and fairly reflect the basis for the Corporation's consolidated financial statements.

(u) **Insurance.**

- (i) The Corporation has in place reasonable and prudent insurance policies appropriate for its size, nature and stage of development. All premiums payable prior to the date hereof under such policies of insurance have been paid and neither the Corporation nor any of the Corporation Subsidiaries has failed to make a claim thereunder on a timely basis.
- (ii) Each of such policies and other forms of insurance is in full force and effect on the date hereof and Vendor will use reasonable commercial efforts to cause the Corporation keep them in full force and effect or renew them as appropriate through the Closing Date. No written (or to the knowledge of Vendor other) notice of cancellation or termination has been received by the Corporation or any Corporation Subsidiary with respect to any such policy.

(v) **Benefit Plans.**

- (i) The Vendor Disclosure Letter contains a true and complete list of all material Vendor Benefit Plans. Complete copies of all material Vendor Benefit Plans including, but not limited to, any material trust instruments, insurance contracts and all amendments thereto have been made available to Purchaser.
- (ii) Vendor and the Purchased Corporations have no material liability for life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof, and there has been no communication to employees by Vendor or any of the Purchased Corporations which could reasonably be interpreted to promise or guarantee such employees retiree health or life insurance or other retiree death benefits on a permanent basis.
- (iii) No Vendor Benefit Plan is a "registered pension plan" as such term is defined in the Tax Act.
- (iv) Each Vendor Benefit Plan has been operated in accordance with its terms and any contributions required to be made under each Vendor Benefit Plan, as of the date hereof, have been timely made and all

obligations in respect of each Vendor Benefit Plan have been properly accrued and reflected in the audited consolidated financial statements for Vendor as at and for the fiscal year ended on December 31, 2014, including the notes thereto and the report by Vendor's auditors thereon.

- (v) There has been no amendment to, announcement by Vendor or any of the Corporation Subsidiaries relating to, or change in employee participation or coverage under, any Vendor Benefit Plan which would increase materially the expense of maintaining such plan above the level of the expense incurred therefor for the most recent fiscal year. Neither the execution of this Agreement, nor the consummation of the transactions contemplated by this Agreement will: (i) entitle any employees of the Purchased Corporations to severance pay or any increase in severance pay upon any termination of employment after the date hereof.
- (w) **Environmental.** Except for any matters that, individually or in the aggregate, would not have or would not reasonably be expected to have a Vendor Material Adverse Effect:
  - (i) all facilities and operations of the Corporation and the Corporation Subsidiaries have been conducted, and are now, in compliance with all Environmental Laws;
  - (ii) the Corporation and the Corporation Subsidiaries are in possession of, and in compliance with, all Environmental Permits that are required to own, lease and operate the Corporation Property and Corporation Mineral Rights and to conduct their respective business as they are now being conducted;
  - (iii) no environmental, reclamation or closure obligation, demand, notice, work order or other liabilities presently exist with respect to any portion of any currently or formerly owned, leased, used or otherwise controlled property, interests and rights or relating to the operations and business of the Corporation and the Corporation Subsidiaries, and to the knowledge of Vendor, there is no basis for any such obligations, demands, notices, work orders or liabilities to arise in the future as a result of any activity in respect of such property, interests, rights, operations and business;
  - (iv) neither the Corporation nor any of the Corporation Subsidiaries is subject to any proceeding, application, order or directive which relates to environmental, health or safety matters, and which may require any material repairs or remediation;
  - (v) to the knowledge of Vendor, there are no changes in the status, terms or conditions of any Environmental Permits held by the Corporation

or any of the Corporation Subsidiaries or any renewal, modification, revocation, reassurance, alteration, transfer or amendment of any such environmental approvals, consents, waivers, permits, orders and exemptions, or any review by, or approval of, any Governmental Entity of such environmental approvals, consents, waivers, permits, orders and exemptions that are required in connection with the execution or delivery of this Agreement, the consummation of the transactions contemplated herein or the continuation of the business of the Corporation or any of the Corporation Subsidiaries following the Closing Date;

- (vi) the Corporation and the Corporation Subsidiaries have made available to Purchaser and Parent all material audits, assessments, investigation reports, studies, plans, regulatory correspondence and similar information with respect to environmental matters; and
- (vii) to the knowledge of Vendor, the Corporation and the Corporation Subsidiaries are not subject to any past or present fact, condition or circumstance that could reasonably be expected to result in liability under any Environmental Laws that would individually or in the aggregate, constitute a Vendor Material Adverse Effect.
- (x) **Restrictions on Business Activities.** There is no agreement, judgment, injunction, order or decree binding upon the Corporation or any Corporation Subsidiary that has or could reasonably be expected to have the effect of prohibiting, restricting or materially impairing any business practice of the Corporation or any Corporation Subsidiary, any acquisition of property by the Corporation or any Corporation Subsidiary or the conduct of business by the Corporation or any Corporation Subsidiary as currently conducted (including following the transaction contemplated by this Agreement).
- (y) **Material Contracts.** Neither the Corporation nor any of the Corporation Subsidiaries is in breach or default under any material Contract to which it is a party or bound, nor does Vendor have knowledge of any condition that with the passage of time or the giving of notice or both would result in such a breach or default, except in each case where any such breaches or defaults would not, individually or in the aggregate, reasonably be expected to result in, or result in, a Vendor Material Adverse Effect. Neither Vendor, the Corporation nor any Corporation Subsidiary knows of, or has received written notice of, any breach or default under (nor, to the knowledge of Vendor, does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under) any such material Contract by any other party thereto except where any such violation or default would not, individually or in the aggregate, reasonably be expected to result in, or result in, a Vendor Material Adverse Effect. Prior to the date hereof, Vendor has made available to Purchaser and



Parent true and complete copies of all of the material Contracts of the Corporation and the Corporation Subsidiaries.

- (z) **Relationships with Customers, Suppliers, Distributors and Sales Representatives.** Neither Vendor, the Corporation nor any Corporation Subsidiary has received any written (or to the knowledge of Vendor) notice that any customer, supplier, distributor or sales representative intends to cancel, terminate or otherwise modify or not renew its relationship with the Corporation or any Corporation Subsidiary, and, to the knowledge of Vendor, no such action has been threatened.
- (aa) **Brokers.** Except for the fees to be paid to Credit Suisse Securities (Europe) Limited pursuant to its engagement letter with Vendor, none of Vendor, the Corporation or any of the Corporation Subsidiaries, or any of their respective officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.
- (bb) **No Expropriation.** No property or asset of Vendor, the Corporation or the Corporation Subsidiaries (including any Corporation Property or Corporation Mineral Rights) has been taken or expropriated by any Governmental Entity nor has any notice or proceeding in respect thereof been given or commenced nor, to the knowledge of Vendor, is there any intent or proposal to give any such notice or to commence any such proceeding.
- (cc) **Corrupt Practices Legislation.** Since November 13, 2012, neither Vendor, the Corporation nor any Corporation Subsidiary, nor any of their respective officers, directors or employees acting on behalf of any of them has taken, committed to take or been alleged to have taken any action which would cause Vendor or any of its subsidiaries or affiliates to be in violation of the CFPOA (and the regulations promulgated thereunder), the FCPA, or any applicable Laws of similar effect of any other jurisdiction, and to the knowledge of Vendor no such action has been taken by any of its agents, representatives or other Persons acting on behalf of Vendor, the Corporation nor any Corporation Subsidiary.
- (dd) **NGOs and Community Groups.** No material dispute between the Corporation nor any Corporation Subsidiary and any non-governmental organization, community, or community group exists or, to the best of Vendor's knowledge, is threatened or imminent with respect to any of the Corporation's properties or exploration activities or those of any Corporation Subsidiary.
- (ee) **Arrangements with Securityholders of Parent.** Vendor does not have any agreement, arrangement or understanding (whether written or oral) with respect to Parent or any of its securities, businesses or operations with any

shareholder of Parent, any interested party of Parent or any related party of any interested party of Parent, or any joint actor with any such persons (and for this purpose, the terms "interested party", "related party" and "joint actor" shall have the meaning ascribed to such terms in Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*).

- (ff) **Data Provided.** To the knowledge of Vendor, the Confidential Information (as defined in the Confidentiality Agreement) provided by or on behalf of the Purchased Corporations to the Purchaser and Parent is true and accurate in all material respects.
- (gg) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which Vendor is a party have been duly executed and delivered by Vendor and constitute legal, valid and binding agreements of Vendor, enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

#### ARTICLE 4

#### REPRESENTATIONS AND WARRANTIES OF PURCHASER AND PARENT

##### Section 4.1 Representations and Warranties of Purchaser and Parent

Except as disclosed in the Parent and Purchaser Disclosure Letter (which shall make reference to the applicable section, subsection, paragraph or subparagraph (and, as applicable, to the relevant representation if there is more than one in any section, subsection, paragraph or subparagraph) below in respect of which such qualification is being made), Purchaser and Parent hereby represent and warrant to Vendor as follows, and acknowledge that Vendor is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) **Incorporation and Qualification.** Each of Purchaser and Parent is an exempted company incorporated with limited liability in the Cayman Islands, and has the corporate power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and each of the Ancillary Agreements to which it is a party. Each of Purchaser and Parent is duly qualified to carry on business and is in good standing in all material respects in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary.
- (b) **Corporate Authorization.** Each of Purchaser and Parent has the requisite corporate power and authority to enter into this Agreement and any

Ancillary Agreement to which it is party, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any such Ancillary Agreement and the consummation by Purchaser and Parent of the transactions contemplated by this Agreement and any such Ancillary Agreement have been duly authorized by the Parent Board and the board of directors of Purchaser, and no other corporate proceedings on the part of Purchaser are necessary to authorize this Agreement or any Ancillary Agreement. This Agreement has been and any Ancillary Agreement to which Purchaser or Parent is a party will be duly executed and delivered by Purchaser or Parent, as the case may, and will be enforceable by Vendor against Purchaser and Parent in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency and other applicable Laws affecting the enforcement of creditors' rights generally and subject to the qualification that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

- (c) **Parent Board and Executive Officer Support.** Each member of the Parent Board and each executive officer of Parent has indicated his or her intention to vote all of his Parent Shares, if applicable, in favour of the Share Issuance Resolution.
- (d) **No Conflict; Required Filings and Consent.** The execution and delivery by each of Purchaser and Parent of this Agreement and any Ancillary Agreement to which it is party and the performance by it of its obligations hereunder and thereunder and the completion of the transactions contemplated thereby will not violate, conflict with or result in a breach of any provision of the constating documents of each of Purchaser and Parent, and will not: (i) violate, conflict with or result in a breach of: (A) any agreement, contract, indenture, deed of trust, mortgage, bond, instrument, Authorization, license or permit to which Purchaser or Parent is a party or by which Purchaser or Parent is bound; or (B) any Law to which Purchaser or Parent is subject or by which Purchaser or Parent is bound; (ii) give rise to any right of termination, or the acceleration of any indebtedness, under any such agreement, contract, indenture, Authorization, deed of trust, mortgage, bond, instrument, license or permit; or (iii) give rise to any rights of first refusal or rights of first offer, trigger any change in control or influence provisions or any restriction or limitation under any such agreement, contract, indenture, Authorization, deed of trust, mortgage, bond, instrument, license or permit, or result in the imposition of any material Lien upon any of the assets of Purchaser or Parent. No Authorization, consent or approval of, or filing with, any Governmental Entity or any court or other authority is necessary on the part of Purchaser or Parent for the consummation by Purchaser and Parent of its obligations in connection with the transactions contemplated by this Agreement or for the completion of the transactions not to cause or result in any material loss of any rights or assets or any interest therein held by Purchaser or Parent in

any material properties. The Key Third Party Consents are the only consents, approvals and notices required from any third party under any material Contracts of Purchase or Parent in order for Purchaser and Parent to proceed with the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement.

(e) **Parent Subsidiaries.**

- (i) Each Parent Subsidiary is duly organized and is validly existing under the Laws of its jurisdiction of incorporation or organization, has full corporate power and authority to own its assets and conduct its business as now owned and conducted by it and is duly qualified to carry on business in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary. Parent beneficially owns, directly or indirectly, all of the issued and outstanding securities of each of Parent Subsidiaries. All of the outstanding shares in the capital of each of Parent Subsidiaries owned directly or indirectly by Parent is: (a) validly issued and fully-paid and all such shares are owned free and clear of all material Liens of any kind or nature whatsoever; and (b) are free of any other material restrictions including any restriction on the right to vote, sell or otherwise dispose of shares. Parent does not hold any material equity interests in any Subsidiary other than (A) its interests in Parent Subsidiaries; and (B) as otherwise disclosed in Parent Disclosure Letter. True and complete copies of the constating documents of the Parent Subsidiaries have been delivered or made available to Vendor, and neither Parent nor any Parent Subsidiary nor any other person has taken any action to amend or supersede such documents.
- (ii) Parent and Parent Subsidiaries collectively own, over 95% of all of the consolidated assets and operations of Parent and its subsidiaries on a consolidated basis and Parent and Parent Subsidiaries collectively generate over 95% of Parent and its subsidiaries' revenues on a consolidated basis.

(f) **Compliance with Laws.**

- (i) The operations of Parent and the Parent Subsidiaries have been and are now conducted in compliance with all applicable Laws of each applicable jurisdiction, the Laws of which have been and are now applicable to the operations of Parent and the Parent Subsidiaries and none of Parent or any of the Parent Subsidiaries has received any notice of any alleged violation of any such Laws, other than non-compliance or violations which, individually or in the aggregate, would not have a Parent Material Adverse Effect.
- (ii) None of Parent or the Parent Subsidiaries is in conflict with, or in default (including cross defaults) under or in violation of: (a) its

Constating Documents; or (b) any agreement or understanding to which it or by which any of its properties or assets is bound or affected.

- (g) **Authorizations.** Parent and the Parent Subsidiaries have obtained all Authorizations necessary for the ownership, operation, development, maintenance, or use of their respective material assets or otherwise in connection with the material business or operations of Parent or the Parent Subsidiaries as currently conducted and such Authorizations are in full force and effect. Parent and the Parent Subsidiaries have fully complied with and are in compliance in all material respects with all Authorizations. There is no action, investigation or proceeding pending or, to the knowledge of Parent, threatened regarding any of the Authorizations. None of Parent or the Parent Subsidiaries has received any notice, whether written or oral, of revocation or non-renewal of any such Authorizations, or of any intention of any Person to revoke or refuse to renew any of such Authorizations and, to the knowledge of Parent, all such Authorizations continue to be effective in order for Parent and the Parent Subsidiaries to continue to conduct their respective businesses as they are currently being conducted. No Person other than Parent or the Parent Subsidiaries and the Government Entity which has granted or otherwise has authority on such Authorizations owns or has any proprietary, financial or other interest (direct or indirect) in any of the material Authorizations.
- (h) **Capitalization of Parent.**
  - (i) The authorized share capital of Parent consists of 1,000,000,000 Parent Shares and 1,000,000,000 undesignated shares of nominal or par value of \$0.01 each. As of the date hereof, there are: (A) 413,143,668 Parent Shares validly issued and outstanding as fully-paid and non-assessable shares of Parent (42,852,328 of which are represented by Parent CDIs); and (B) 27,783,837 outstanding stock options providing for the issuance of 27,783,837 Parent Shares upon the exercise thereof. Except for the securities referred to in this subsection, there are no options, warrants, conversion privileges, calls or other rights, shareholder rights plans, agreements, arrangements, commitments, or obligations of Parent or any of Parent Subsidiaries to issue or sell any shares of Parent or of any of Parent Subsidiaries or securities or obligations of any kind convertible into, exchangeable for or otherwise carrying the right or obligation to acquire any shares of Parent or any of Parent Subsidiaries, there are no outstanding stock appreciation rights, phantom equity or similar rights, agreements, arrangements or commitments of Parent or any of Parent Subsidiaries based upon the book value, income or any other attribute of Parent or any of Parent Subsidiaries, and no Person is entitled to any pre-emptive or other similar right granted by Parent or any of Parent Subsidiaries.

- (ii) All Parent Shares that may be issued pursuant to the exercise of outstanding stock options to acquire Parent Shares will, when issued in accordance with the terms of such securities, be duly authorized, validly issued, fully-paid and non-assessable and are not and will not be subject to or issued in violation of, any pre-emptive rights.
  - (iii) There are no outstanding contractual obligations of Parent or any of Parent Subsidiaries to repurchase, redeem or otherwise acquire any Parent Shares or any shares of any of the Parent Subsidiaries.
  - (iv) No order ceasing or suspending trading in securities of Parent nor prohibiting the sale of such securities has been issued and is outstanding against Parent or, its directors, officers or promoters.
- (i) **Consideration Shares.** Upon their issuance, the Consideration Shares will be validly issued as fully paid and non-assessable ordinary shares of Parent.
- (j) **Shareholder and Similar Agreements.** Neither Purchaser, Parent nor any Parent Subsidiary is party to any shareholder, pooling, voting trust or other similar agreement relating to the issued and outstanding shares in the capital of Purchaser, Parent or any Parent Subsidiary
- (k) **Reports.** Parent has filed with all applicable Governmental Entities true and complete copies of Parent Public Documents that Parent is required to file therewith. Parent Public Documents at the time filed: (i) did not contain any misrepresentation, and (i) complied in all material respects with the requirements of applicable Securities Laws. Parent has not filed any confidential material change report with any Governmental Entity which at the date hereof remains confidential.
- (l) **Financial Statements.**
- (i) The audited consolidated financial statements for Parent as at and for each of the fiscal year ended December 31, 2014, including the notes thereto and the reports by Parent's auditors thereon and the unaudited interim consolidated financial statements for Parent for the 6 months ended June 30, 2015 including the notes thereto have been prepared in accordance with GAAP applied on a basis consistent with prior periods (except in the case of a change in accounting principles) and all applicable Laws and present fairly, in all material respects, the consolidated financial condition and results of operations of Parent and the Parent Subsidiaries as of the respective dates thereof and its results of operations and cash flows for the respective periods covered thereby (except as may be indicated expressly in the notes thereto). There are no outstanding loans made by Parent or any Parent Subsidiary to any executive officer or director of Parent.

- (ii) The management of Parent has established and maintained a system of disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed by Parent in its annual filings, interim filings or other reports filed or submitted by it under the applicable Laws imposed by Governmental Entities is recorded, processed, summarized and reported within the time periods specified in such Laws imposed by such Governmental Entities. Such disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by Parent in its annual filings, interim filings or other reports filed or submitted under the applicable Laws imposed by Governmental Entities is accumulated and communicated to Parent's management, including its chief executive officers and chief financial officers (or Persons performing similar functions), as appropriate to allow timely decisions regarding required disclosure.
- (iii) Parent maintains internal control over financial reporting. Such internal control over financial reporting is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that: (A) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent and the Parent Subsidiaries; (B) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of Parent and the Parent Subsidiaries are being made only with Authorizations of management and directors of Parent and the Parent Subsidiaries; and (C) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of Parent or any Parent Subsidiary that could have a material effect on its financial statements. To the knowledge of Parent, as of the date of this Agreement: (x) there are no material weaknesses in the design and implementation or maintenance of internal controls over financial reporting of Parent that are reasonably likely to adversely affect the ability of Parent to record, process, summarize and report financial information; and (y) there is no fraud, whether or not material, that involves management or other employees who have a significant role in the internal control over financial reporting of Parent.
- (iv) Since December 31, 2014, neither Parent nor any Parent Subsidiary nor, to Parent's knowledge, any director, officer, employee, auditor, accountant or representative of Parent or any Parent Subsidiary has received or otherwise had or obtained knowledge of any complaint, allegation, assertion, or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or

methods of Parent or any Parent Subsidiary or their respective internal accounting controls, including any complaint, allegation, assertion, or claim that Parent or any Parent Subsidiary has engaged in questionable accounting or auditing practices, which has not been resolved to the satisfaction of the audit committee of the Parent Board.

- (m) **Undisclosed Liabilities.** Except as disclosed in Parent Public Documents, neither Parent nor any of Parent Subsidiaries has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, except for: (i) liabilities and obligations that are specifically presented on the audited balance sheet of Parent as of December 31, 2014 (the "**Parent Balance Sheet**") or disclosed in the notes thereto; or (ii) liabilities and obligations incurred in the Ordinary Course since December 31, 2014, that are not and would not, individually or in the aggregate with all other liabilities and obligations of Parent and the Parent Subsidiaries (other than those disclosed on Parent Balance Sheet and/or the notes to Parent financial statements), reasonably be expected to have an adverse financial impact in excess of \$5,000,000 on the Parent and the Parent Subsidiaries, collectively or, as a consequence of the consummation of the transactions contemplated by this Agreement have an adverse financial impact in excess of \$5,000,000 on the Parent and the Parent Subsidiaries, collectively. Without limiting the foregoing, Parent Balance Sheet reflects reasonable reserves in accordance with GAAP for contingent liabilities relating to pending litigation and other contingent obligations of Parent and the Parent Subsidiaries.
- (n) **The Parent Properties and the Parent Mineral Rights.**
  - (i) All of Parent's and Parent Subsidiaries' material real properties (collectively, the "**Parent Properties**") and all of Parent's and the Parents Subsidiaries' material mineral interests and rights (including any material claims, concessions, exploration licenses, exploitation licenses, prospecting permits, mining leases and mining rights, in each case, either existing under contract, by operation of Law or otherwise) (collectively, the "**Parent Mineral Rights**"), are accurately set forth in Parent Public Documents. Other than the Parent Properties and Parent Mineral Rights set out in the Parent Public Documents, neither Parent nor Parent Subsidiaries, owns or has any interest in any material real property or any material mineral interests and rights.
  - (ii) Except as set forth in Parent Public Documents, Parent or a Parent Subsidiary is the sole legal and beneficial owner of all right, title and interest in and to the Parent Properties and Parent Mineral Rights, free and clear of any material Liens.



- (iii) All of Parent Mineral Rights have been properly located and recorded in compliance with applicable Laws and are comprised of valid and subsisting mineral claims.
- (iv) All of the Parent Properties and Parent Mineral Rights are in good standing under applicable Laws in all material respects and all work required to be performed and filed in respect thereof has been performed and filed, all Taxes, rentals, fees, expenditures and other payments in respect thereof have been paid or incurred and all filings in respect thereof have been made.
- (v) There is no material adverse claim against or challenge to the title to or ownership of any Parent Properties or any of Parent Mineral Rights.
- (vi) Parent or a Parent Subsidiary has the exclusive right to deal with all of the Parent Properties and all of Parent Mineral Rights.
- (vii) Except as set forth in Parent Public Documents, no Person other than Parent and the Parent Subsidiaries has any interest in any of the Parent Properties or any of Parent Mineral Rights or the production or profits therefrom or any royalty in respect thereof or any right to acquire any such interest.
- (viii) Except as set forth in Parent Public Documents, there are no back-in rights, earn-in rights, rights of first refusal or similar provisions or rights which would affect Parent's or a Parent Subsidiary's interest in any of the Parent Properties or any of Parent Mineral Rights.
- (ix) There are no material restrictions on the ability of Parent and the Parent Subsidiaries to use, transfer or exploit any of the Parent Properties or any of Parent Mineral Rights, except pursuant to the applicable Law.
- (x) Neither Parent nor any of Parent Subsidiaries has received any notice, whether written or oral, from any Governmental Entity of any revocation or intention to (i) revoke any interest of Parent or a Parent Subsidiary in any of the Parent Properties or any of Parent Mineral Rights; (ii) require modifications to the terms of existing contractual arrangements with such Governmental Entities in relation to Parent Mineral Rights, or (iii) not to renew any such interest in accordance with applicable Law.
- (xi) Parent and the Parent Subsidiaries have all surface rights, including fee simple estates, leases, easements, rights of way and permits or licenses for operations from landowners or Governmental Entities permitting the use of land by Parent and the Parent Subsidiaries, and mineral interests that are required to exploit the development

potential of Parent Properties and Parent Mineral Rights as contemplated in Parent Public Documents on or before the date hereof and no third party or group holds any such rights that would be required by Parent to develop Parent Properties or any of Parent Mineral Rights as contemplated in Parent Public Documents on or before the date hereof.

- (xii) All mines located in or on the lands of Parent or any of Parent Subsidiaries, or lands pooled or unitized therewith, which have been abandoned by Parent or any of Parent Subsidiaries, have been abandoned in accordance with good mining practices and in material compliance with all applicable Laws, and all future abandonment, remediation and reclamation obligations known to Parent as of the date hereof have been accurately set forth in Parent Public Documents without misrepresentation.
- (o) **Mineral Reserves and Resources.** The proven and probable mineral reserves and measured, indicated and inferred mineral resources for various Parent Properties and Parent Mineral Rights were prepared in all material respects in accordance with sound mining, engineering, geoscience and other applicable industry standards and practices, and in all material respects in accordance with all applicable Laws, including the requirements of NI 43-101. There has been no material reduction (other than in respect of normal depletion due to mining activities) in the aggregate amount of estimated mineral reserves, estimated mineral resources or mineralized material of Parent, Parent Subsidiaries and its material joint ventures, taken as a whole, from the amounts set forth in Parent Public Documents. All information regarding Parent Properties and Parent Mineral Rights, including all drill results, technical reports and studies, that is required to be disclosed at Law, have been disclosed in Parent Public Documents on or before the date hereof.
- (p) **Operational Matters.** Except as would not, individually or in the aggregate, be reasonably expected to have an adverse effect of over \$5,000,000 on the Parent and the Parent Subsidiaries, collectively:
  - (i) all rentals, royalties, overriding royalty interests, production payments, net profits, interest burdens, payments and obligations due and payable, or performable, as the case may be, on or prior to the date hereof under, with respect to, or on account of, any direct or indirect assets of Parent, Parent Subsidiaries and their material joint ventures, have been: (A) duly paid or accrued; (B) duly performed; or (C) accrued prior to the date hereof; and
  - (ii) all costs, expenses, and liabilities payable on or prior to the date hereof under the terms of any contracts and agreements to which Parent or any Parent Subsidiary or material joint ventures is directly or indirectly bound have been properly and timely paid, except for

such expenses that are being currently paid prior to delinquency in the Ordinary Course.

(q) **Employment Matters**

- (i) Except as disclosed in Parent Public Documents, neither Parent nor any of Parent Subsidiaries: (i) is a party to any collective bargaining agreement; or (ii) is subject to any application for certification or, to the knowledge of Parent, threatened or apparent union-organizing campaigns for employees not covered under a collective bargaining agreement. To the knowledge of Parent, no fact or event exists that is likely to give rise to a change in the representation in this subsection 4.1(q) on or before the Closing Date.
- (ii) Neither Parent nor any of Parent Subsidiaries is subject to any material claim for wrongful dismissal, constructive dismissal or any other tort claim, actual or, to the knowledge of Parent, threatened, or any litigation actual, or to the knowledge of Parent, threatened, relating to employment or termination of employment of employees or independent contractors. To the knowledge of Parent, no material labour strike, lock-out, slowdown or work stoppage is pending or threatened against or directly affecting Parent.
- (iii) Parent and the Parent Subsidiaries have operated in accordance with all applicable Laws with respect to employment and labour, including employment and labour standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights, labour relations and privacy and there are no current, pending, or to the knowledge of Parent, threatened material proceedings before any board or tribunal with respect to any of the areas listed herein.

(r) **Absence of Certain Changes or Events.**

Since December 31, 2014:

- (i) Parent and the Parent Subsidiaries have conducted their respective businesses only in the Ordinary Course;
- (ii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) except as disclosed in the unaudited financial statements of the Parent for the six-month period ended June 30, 2015 and other than in the Ordinary Course since then;
- (iii) there has not been any event, circumstance or occurrence which has had or is reasonably likely to give rise to a Parent Material Adverse Effect;

- (iv) there has not been any material change in the accounting practices used by Parent and the Parent Subsidiaries, except as disclosed in Parent Public Documents;
  - (v) there has not been any redemption, repurchase or other acquisition of Parent Shares by Parent, or any declaration, setting aside or payment of any dividend or other distribution (whether in cash, shares or property) with respect to Parent Shares;
  - (vi) there has not been a material change in the level of accounts receivable or payable, inventories or employees, other than those changes in the Ordinary Course;
  - (vii) there has not been any entering into, or an amendment of, any material Contract other than in the Ordinary Course;
  - (viii) there has not been any satisfaction or settlement of any material claims or material liabilities that were not reflected in Parent's audited financial statements, other than the settlement of claims or liabilities incurred in the Ordinary Course; and
  - (ix) except for Ordinary Course adjustments, there has not been any increase in the salary, bonus, or other remuneration payable to any officers or senior or executive officers of Parent or the Parent Subsidiaries.
- (s) **Litigation.** Except as disclosed in Parent Public Documents, there is no claim, action, proceeding or investigation pending or, to the knowledge of Parent, threatened against or relating to Parent or any of Parent Subsidiaries, the business of Parent or any of Parent Subsidiaries or affecting any of their properties, assets, before or by any Governmental Entity which, if adversely determined, would have, or reasonably could be expected to have, a Vendor Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated by this Agreement, nor to knowledge of Parent are there any events or circumstances which could reasonably be expected to give rise to any such claim, action, proceeding or investigation; provided, however, that the representation in this Subsection 4.1(aa) shall not apply to claims, actions, proceedings, or investigations which may arise after the date of this Agreement. Neither Parent nor any of Parent Subsidiaries is subject to any outstanding order, writ, injunction or decree which has had or is reasonably likely to have a Parent Material Adverse Effect or which would prevent or materially delay consummation of the transactions contemplated by this Agreement.

(t) **Taxes.**

- (i) Each of Parent and the Parent Subsidiaries has duly and in a timely manner made or prepared all Tax Returns required to be made or prepared by it, and duly and in a timely manner filed all material Tax Returns required to be filed by it with the appropriate Governmental Entity such Tax Returns were complete and correct in all material respects and Parent and each of Parent Subsidiaries has paid all Taxes, including installments on account of Taxes for the current year required by applicable Law, which are due and payable by it whether or not assessed by the appropriate Governmental Entity and Parent has provided adequate accruals in accordance with GAAP in the most recently published financial statements of Parent for any Taxes of Parent and each of Parent Subsidiaries for the period covered by such financial statements that have not been paid whether or not shown as being due on any material Tax Returns. Since such publication date, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the Ordinary Course.
- (ii) Each of Parent and the Parent Subsidiaries has duly and timely withheld all material Taxes and other amounts required by Law to be withheld by it (including material Taxes and other amounts required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the benefit of any Person) and has duly and timely remitted to the appropriate Governmental Entity such Taxes or other amounts required by Law to be remitted by it.
- (iii) Each of Parent and the Parent Subsidiaries has duly and timely collected all amounts on account of any sales, use or transfer Taxes, including goods and services, harmonized sales, provincial and territorial taxes and state and local taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Entity such amounts required by Law to be remitted by it.
- (iv) None of Parent nor any of Parent Subsidiaries has made, prepared and/or filed any elections, designations or similar filings relating to Taxes or entered into any agreement or other arrangement in respect of Taxes or Tax Returns that has effect for any period ending after the Closing Date.
- (v) None of Parent or the Parent Subsidiaries has acquired property from a non-arm's length Person within the meaning of the Tax Act for consideration the value of which is less than fair market value of the property.

- (vi) Except as disclosed in Parent Public Documents, there are no material proceedings, investigations, audits or claims now pending or threatened against Parent or any of Parent Subsidiaries in respect of any Taxes and there are no material matters under discussion, audit or appeal with any Governmental Entity relating to Taxes.
- (vii) Parent has made available to Vendor copies of all material Tax Returns for the years 2013 and 2014, and all material written communication to or from any Governmental Entity and relating to the Taxes of any of Parent and the Parent Subsidiaries, to the extent relating to periods or events in respect of which any Governmental Entity may by Law assess or otherwise impose any such tax on Parent or any of Parent Subsidiaries.
- (viii) There are no Liens for Taxes upon any properties or assets of Parent or any of Parent Subsidiaries (other than Liens relating to Taxes not yet due and payable and for which adequate reserves have been recorded on Parent Balance Sheet).
- (u) **Books and Records.** The corporate records and minute books of Parent and the Parent Subsidiaries have been maintained in accordance with all applicable Laws, and the minute books of Parent and the Parent Subsidiaries as provided to Parent are complete and accurate in all material respects. The corporate minute books for Parent and the Parent Subsidiaries contain minutes of all meetings and resolutions of the directors and securityholders held. The financial books and records and accounts of Parent and the Parent Subsidiaries in all material respects: (a) have been maintained in accordance with good business practices and in accordance with GAAP and with the accounting principles generally accepted in the country of domicile of each such entity, on a basis consistent with prior years (except in the case of a change in accounting principles for such jurisdiction); (b) are stated in reasonable detail and, in the case of Parent Subsidiaries, during the period of time when owned by Parent, accurately and fairly reflect the transactions and dispositions of assets of Parent and the Parent Subsidiaries; and (c) in the case of Parent Subsidiaries, during the period of time when owned by Parent, accurately and fairly reflect the basis for Parent's consolidated financial statements.
- (v) **Insurance.**
  - (i) Parent has in place reasonable and prudent insurance policies appropriate for its size, nature and stage of development. All premiums payable prior to the date hereof under such policies of insurance have been paid and neither Parent nor any of Parent Subsidiaries has failed to make a claim thereunder on a timely basis.
  - (ii) Each of such policies and other forms of insurance is in full force and effect on the date hereof and Parent will use reasonable commercial

efforts to keep them in full force and effect or renew them as appropriate through the Closing Date. No written (or to the knowledge of Parent, other) notice of cancellation or termination has been received by Parent or any Parent Subsidiary with respect to any such policy.

- (w) **Non-Arm's Length Transactions.** Except for employment or consulting or employment or consulting compensation agreements entered into in the Ordinary Course or as disclosed in Parent Public Documents, there are no current contracts, commitments, agreements, arrangements or other transactions (including relating to indebtedness by Parent or any of Parent Subsidiaries) between Parent or any of Parent Subsidiaries on the one hand, and any: (a) officer or director of Parent or any of Parent Subsidiaries; (b) any holder of record or, to the knowledge of Vendor, beneficial owner of five percent or more of the voting securities of Parent; or (c) any affiliate or associate of any officer, director or beneficial owner, on the other hand.
- (x) **Benefit Plans.**
  - (i) Parent Disclosure Letter contains a true and complete list of all material Parent Benefit Plans. Complete copies of all material Parent Benefit Plans including, but not limited to, any material trust instruments, insurance contracts and all amendments thereto have been made available to Parent.
  - (ii) Neither Parent nor Parent Subsidiaries have any material liability for life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof, and there has been no communication to employees by Parent or any of Parent Subsidiaries which could reasonably be interpreted to promise or guarantee such employees retiree health or life insurance or other retiree death benefits on a permanent basis.
  - (iii) No Parent Benefit Plan is a "registered pension plan" as such term is defined in the Tax Act.
  - (iv) Each Parent Benefit Plan has been operated in accordance with its terms and any contributions required to be made under each Vendor Benefit Plan, as of the date hereof, have been timely made and all obligations in respect of each Parent Benefit Plan have been properly accrued and reflected in the audited consolidated financial statements for Parent as at and for the fiscal year ended on December 31, 2014, including the notes thereto and the report by Parent's auditors thereon.
  - (v) There has been no amendment to, announcement by Parent or any of Parent Subsidiaries relating to, or change in employee participation or coverage under, any Parent Benefit Plan which would increase

materially the expense of maintaining such plan above the level of the expense incurred therefor for the most recent fiscal year. Neither the execution of this Agreement, nor the consummation of the transactions contemplated by this Agreement will: (i) entitle any employees of Parent or any of Parent Subsidiaries to severance pay or any increase in severance pay upon any termination of employment after the date hereof; (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of Parent Benefit Plans; or (iii) limit or restrict the right of Parent or, after the consummation of the transactions contemplated by this Agreement, Parent to merge, amend or terminate any of Parent Benefit Plans.

- (y) **Environmental.** Except for any matters that, individually or in the aggregate, would not have or would not reasonably be expected to have a Parent Material Adverse Effect:
- (i) all facilities and operations of Parent and the Parent Subsidiaries have been conducted, and are now, in compliance with all Environmental Laws;
  - (ii) Parent and the Parent Subsidiaries are in possession of, and in compliance with, all Environmental Permits that are required to own, lease and operate Parent Properties and Parent Mineral Rights and to conduct their respective business as they are now being conducted;
  - (iii) no environmental, reclamation or closure obligation, demand, notice, work order or other liabilities presently exist with respect to any portion of any currently or formerly owned, leased, used or otherwise controlled property, interests and rights or relating to the operations and business of Parent and the Parent Subsidiaries except as disclosed in Parent Public Documents and, to the knowledge of Parent, there is no basis for any such obligations, demands, notices, work orders or liabilities to arise in the future as a result of any activity in respect of such property, interests, rights, operations and business;
  - (iv) neither Parent nor any of Parent Subsidiaries is subject to any proceeding, application, order or directive which relates to environmental, health or safety matters, and which may require any material repairs or remediation;
  - (v) to the knowledge of Parent, there are no changes in the status, terms or conditions of any Environmental Permits held by Parent or any of Parent Subsidiaries or any renewal, modification, revocation, reassurance, alteration, transfer or amendment of any such environmental approvals, consents, waivers, permits, orders and



exemptions, or any review by, or approval of, any Governmental Entity of such environmental approvals, consents, waivers, permits, orders and exemptions that are required in connection with the execution or delivery of this Agreement, the consummation of the transactions contemplated herein or the continuation of the business of Parent or any of Parent Subsidiaries following the Closing Date;

- (vi) Parent and the Parent Subsidiaries have made available to Vendor all material audits, assessments, investigation reports, studies, plans, regulatory correspondence and similar information with respect to environmental matters; and
- (vii) to the knowledge of Parent, Parent and the Parent Subsidiaries are not subject to any past or present fact, condition or circumstance that could reasonably be expected to result in liability under any Environmental Laws that would individually or in the aggregate, constitute a Parent Material Adverse Effect.
- (z) **Restrictions on Business Activities.** There is no agreement, judgment, injunction, order or decree binding upon Parent or any Parent Subsidiary that has or could reasonably be expected to have the effect of prohibiting, restricting or materially impairing any business practice of Parent or any Parent Subsidiary, any acquisition of property by Parent or any Parent Subsidiary or the conduct of business by Parent or any Parent Subsidiary as currently conducted (including following the transaction contemplated by this Agreement).
- (aa) **Material Contracts.** Neither Parent nor any Parent Subsidiary is in breach or default under any material Contract to which it is a party or bound, nor does Parent have knowledge of any condition that with the passage of time or the giving of notice or both would result in such a breach or default, except in each case where any such breaches or defaults would not, individually or in the aggregate, reasonably be expected to result in, or result in, a Parent Material Adverse Effect. Neither Parent nor any Parent Subsidiary knows of, or has received written notice of, any material breach or default under (nor, to the knowledge of Parent, does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under) any such material Contract by any other party. Prior to the date hereof, Parent has made available to Parent true and complete copies of all of the material Contracts of Parent.
- (bb) **Relationships with Customers, Suppliers, Distributors and Sales Representatives.** Parent has not received any written (or to the knowledge of Parent) notice that any customer, supplier, distributor or sales representative intends to cancel, terminate or otherwise modify or not renew its relationship with Parent or any Parent Subsidiary, and, to the knowledge of Parent, no such action has been threatened.

- (cc) **Brokers.** Except for the fees to be paid to UBS Limited pursuant to its engagement letter with Parent, none of Parent or the Parent Subsidiaries or any of their respective officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.
- (dd) **Reporting Issuer Status.** As of the date hereof, Parent is a reporting issuer not in default (or the equivalent) under the Securities Laws of each of the Provinces of Canada other than Quebec.
- (ee) **Listing.** The Parent Shares are listed on the TSX and quoted on the OTC QX, and are not listed or quoted on any other market, and the Parent CDIs are listed on the ASX.
- (ff) **Stock Exchange Compliance.** Parent is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the TSX and the ASX.
- (gg) **No Expropriation.** No property or asset of Parent or the Parent Subsidiaries (including any Parent Properties or Parent Mineral Rights) has been taken or expropriated by any Governmental Entity nor has any notice or proceeding in respect thereof been given or commenced nor, to the knowledge of Parent, is there any intent or proposal to give any such notice or to commence any such proceeding.
- (hh) **Corrupt Practices Legislation.** Since November 13, 2012, neither Parent, Parent Subsidiaries and their affiliates, nor any of their respective officers, directors or employees acting on behalf of Parent or any of Parent Subsidiaries or their affiliates has taken, committed to take or been alleged to have taken any action which would cause Neither Parent, Parent Subsidiaries and their affiliates to be in violation of the CFPOA, the FCPA, or any applicable Laws of similar effect of any other jurisdiction, and to the knowledge of Parent no such action has been taken by any of its agents, representatives or other Persons acting on behalf of any of Parent, the Parent Subsidiaries and their affiliates.
- (ii) **NGOs and Community Groups.** No material dispute between Parent or any of Parent Subsidiaries and any non-governmental organization, community, or community group exists or, to the best of Parent's knowledge, is threatened or imminent with respect to any of Parent's or any of Parent Subsidiaries' properties or exploration activities.
- (jj) **Data Provided.** To the knowledge of the Purchaser and the Parent, the Confidential Information (as defined in the Confidentiality Agreement) provided by or on behalf of the Purchaser and the Parent is true and accurate in all material respects.

- (kk) **Execution and Binding Obligation.** This Agreement and each of the Ancillary Agreements to which Purchaser or Parent is a party have been duly executed and delivered by Purchaser and Parent and constitute legal, valid and binding agreements of Purchaser and Parent, enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to: (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

## **ARTICLE 5**

### **PRE-CLOSING COVENANTS OF THE PARTIES**

#### **Section 5.1      Covenants of Vendor Regarding the Conduct of Business**

Vendor covenants and agrees that, during the period from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms, except as required or permitted by this Agreement, required by applicable Laws or any Governmental Entities or consented to by Purchaser and Parent in writing (which consent shall not be unreasonably withheld or delayed), Vendor will cause each of the Purchased Corporations to conduct its business in the Ordinary Course, manage its Working Capital in the Ordinary Course, and use commercially reasonable efforts to maintain and preserve their business organization, assets, employees, goodwill and business relationships. Without limiting the generality of the foregoing, from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms, except as required or permitted by this Agreement or as disclosed in the Vendor Disclosure Letter, or to give effect to the Pre-Closing Reorganization Vendor shall not permit any Purchased Corporation to, directly or indirectly, without the prior written consent of Purchaser and Parent (such consent not to be unreasonably withheld, conditioned or delayed):

- (a) take any action except in the Ordinary Course of such Purchased Corporation;
- (b) (i) amend its articles, charter or by-laws or other comparable organizational documents; (ii) split, combine or reclassify any shares in the capital of such Purchased Corporation; (iii) issue, grant, deliver, sell or pledge, or agree to issue, grant, deliver, sell or pledge, any shares of such Purchased Corporation, or any rights convertible into or exchangeable or exercisable for, or otherwise evidencing a right to acquire, shares or other securities of such Purchased Corporation; (iv) redeem, purchase or otherwise acquire, or offer to redeem, purchase or otherwise acquire, any outstanding securities of such Purchased Corporation; (v) amend the terms of any of its securities; (vi) adopt a plan of liquidation or resolution providing for the liquidation or dissolution of such Purchased Corporation; (vii) amend its accounting policies or adopt new accounting policies, in each case except as required in

accordance with GAAP; or (viii) enter into any agreement with respect to any of the foregoing;

- (c) (i) sell, pledge, hypothecate, lease, license, sell and lease back, mortgage, dispose of or encumber or otherwise transfer, in whole or in part, any of its interest in the Corporation Properties; (ii) acquire (by merger, amalgamation, consolidation or acquisition of shares or assets or otherwise), directly or indirectly, any assets, securities, properties, interests, business, corporation, partnership or other business organization or division thereof, or make any investment either by the purchase of securities, contribution of capital, property transfer, or purchase of any other property or assets of any other Person other than pursuant to a Contract in existence on the date hereof; (iii) incur, create, assume or otherwise become liable for, any indebtedness for borrowed money or any other liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person, or make any loans, capital contributions, investments or advances other than pursuant to a Contract in existence on the date hereof; (iv) waive, release, grant or transfer any rights of material value; or (v) authorize or propose any of the foregoing or enter into any agreement to do any of the foregoing;
- (d) except in the Ordinary Course: (i) sell, pledge, hypothecate, lease, license, sell and lease back, mortgage, dispose of or encumber or otherwise transfer any assets, securities, properties, interests or businesses of such Purchased Corporation; (ii) pay, discharge or satisfy any material liabilities or obligations; or (iii) authorize or propose any of the foregoing or enter into any agreement to do any of the foregoing;
- (e) (i) grant to any officer, employee, consultant or director of such Purchased Corporation an increase in compensation in any form, or grant any general salary increase; (ii) make any loan to any officer, employee, consultant or director of such Purchased Corporation; (iii) take any action with respect to the grant of any severance, change of control, bonus or termination pay to, or enter into any employment agreement, deferred compensation or other similar agreement (or amend any such existing agreement) with, or hire or terminate employment (except for just cause) of, any officer, employee, consultant or director of such Purchased Corporation; (iv) increase any benefits payable under any existing severance or termination pay policies or employment agreements, or adopt or materially amend any bonus, profit sharing, option, pension, retirement, deferred compensation, insurance, incentive compensation, compensation or other similar plan, agreement, trust, fund or arrangement for the benefit of directors, officers, employees, consultants or former directors, officers, employees or consultants of such Purchased Corporation; (v) increase bonus levels or other benefits payable to any director, executive officer, consultant or employee of such Purchased Corporation; (vi) provide for accelerated vesting, removal of restrictions or

an exercise of any stock based or stock related awards (including stock options, stock appreciation rights, deferred share units, performance units and restricted share awards) upon a change of control occurring on or prior to the Closing Time; or (vii) establish, adopt or amend (except as required by applicable Law) any collective bargaining agreement or similar agreement, except with respect to paragraphs (i) and (v) above for increase in compensation made or granted as part of periodic performance evaluation reviews in the Ordinary Course;

- (f) settle, pay, discharge, satisfy, compromise, waive, assign or release: (i) any material action, claim or proceeding brought against such Purchased Corporation; or (ii) any action, claim or proceeding brought by any present, former or purported holder of its securities in connection with the transactions contemplated by this Agreement;
- (g) enter into any agreement or arrangement that limits or otherwise restricts in any material respect such Purchased Corporation or any of its subsidiaries or any successor thereto, or that would, after the Closing Time, limit or restrict in any material respect such Purchased Corporation from competing in any manner;
- (h) waive, release or assign any material rights, claims or benefits of such Purchased Corporation;
- (i) (i) enter into any agreement that if entered into prior to the date hereof would be a material Contract; or (ii) modify or amend in any material respect, transfer or terminate any material Contract, or waive, release or assign any material rights or claims thereto or thereunder;
- (j) change any method of Tax accounting, make or change any Tax election, file any amended Tax return, settle or compromise any Tax liability, agree to an extension or waiver of the limitation period with respect to the assessment, reassessment or determination of Taxes, enter into any closing agreement with respect to any Tax or surrender any right to claim a Tax refund, except for any such change, filing, settlement or agreement which had been commenced or was in progress as of the date of this Agreement;
- (k) take any action or fail to take any action which action or failure to act would result in the material loss, expiration or surrender of, or the loss of any material benefit under, or reasonably be expected to cause any Governmental Entity to institute proceedings for the suspension, revocation or limitation of rights under, any material Permits or any material Authorization or from any Governmental Entity necessary to conduct its businesses as now conducted or as proposed to be conducted, or fail to prosecute with commercially reasonable due diligence any pending applications to any Governmental Entities for Approvals;

- (l) take any action or fail to take any action that is intended to, or would reasonably be expected to, individually or in the aggregate, prevent, materially delay or materially impede the ability of Vendor to consummate the transactions contemplated by this Agreement; or
- (m) agree, resolve or commit to do any of the foregoing.

Vendor shall promptly notify Purchaser and Parent in writing of any circumstance or development that, to the knowledge of Vendor, is or could reasonably be expected to constitute a Vendor Material Adverse Effect.

## **Section 5.2 Additional Covenants of Vendor.**

Vendor shall and shall cause the Purchased Corporations to perform all obligations required or desirable to be performed by Vendor or any of the Purchased Corporations under this Agreement, co-operate with Purchaser and Parent in connection therewith, and do or cause to be done all such further acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated in this Agreement, including the execution and delivery of such documents as the Purchaser and Parent may reasonably require. Without limiting the generality of the foregoing, Vendor shall and, where applicable, shall cause its subsidiaries to:

- (a) provide to Purchaser and Parent two Business Days prior to the Closing Date a statement of: (i) the Cash that will be held by each of the Purchased Corporations, it being understood that such statement of Cash for the Corporation Subsidiaries will be in United States dollars as calculated using the 15h CET rate of the European Central Bank on the second Business Day prior to the Closing Date (the "**Purchased Corporations Cash**"); and (ii) the most recently available calculation of Working Capital of each of the Purchased Corporations;
- (b) apply for and use commercially reasonable efforts to obtain all required approvals from Governmental Entities, including the Key Regulatory Approvals, relating to the sale by Vendor of the Corporation shares to Purchaser, and in doing so, keep Purchaser and Parent informed as to the status of the proceedings related to obtaining such approvals, including providing Purchaser and Parent with copies of all related applications and notifications, in draft form (except where such material is confidential in which case it will be provided (subject to applicable Laws) to Purchaser's and Parent's outside counsel on an "external counsel" basis), in order for Purchaser and Parent to provide their comments thereon, which shall be given due and reasonable consideration;
- (c) use commercially reasonable efforts to obtain as soon as practicable following execution of this Agreement all third party consents, approvals and notices relating to the sale by Vendor of the Corporations Shares to Purchaser required under any of the material Contracts, including all Key Third Party Consents; and

- (d) defend all lawsuits or other legal, regulatory or other proceedings against Vendor challenging or affecting this Agreement or the consummation of the transactions contemplated hereby.

### **Section 5.3 Covenants of Parent Regarding the Conduct of Business**

Parent covenants and agrees that, during the period from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms, except as required or permitted by this Agreement, required by applicable Laws or any Governmental Entities or consented to by Vendor in writing (which consent shall not be unreasonably withheld or delayed), Parent shall, and shall cause Purchaser and each of Parent's subsidiaries to: (i) conduct its business in the Ordinary Course, which business includes, without limitation, the acquisition (directly or indirectly), exploration, development and operation of mineral projects; (ii) use commercially reasonable efforts to maintain and preserve their business organization, assets, employees, goodwill and business relationships; (iii) ensure that all of the assets, projects and businesses of Parent and its subsidiaries are managed, carried out, conducted and administered (as the case may be) materially in compliance with all applicable Laws and Authorizations; (iv) maintain all material Authorizations which are required for the operation of the business of Parent and its subsidiaries as it was operating immediately prior to the date of this Agreement; (v) not enter into line of business or other activities in which Parent or any of its subsidiaries is not engaged as of the date of this Agreement; (vi) not amend its articles, charter or by-laws or other comparable organizational documents; (vii) not split, combine or reclassify any shares in its capital; (viii) not amend the terms of any of its securities; (ix) not issue Parent Shares or securities convertible into Parent Shares except pursuant to rights or obligations existing as of the date of this Agreement; (x) not undertake, announce or propose any material acquisitions or dispositions; (xi) not incur any material indebtedness except in the Ordinary Course; (xii) not grant an encumbrance or agree to grant an encumbrance in respect of the whole or a substantial part of the business, property or assets of Parent and its subsidiaries; (xiii) enter into any agreement or arrangement that limits or otherwise restricts in any material respect Parent or any of its subsidiaries or any successor thereto, or that would, after the Closing Time, limit or restrict in any material respect Parent or any such subsidiary from competing in any manner; (xiv) not adopt a plan of liquidation or resolution providing for its liquidation or dissolution; (xv) not amend its accounting policies or adopt new accounting policies, in each case except as required to comply with GAAP; (xvi) take any action, or permit any action to be taken on its behalf, and it will refrain from taking any action which, in either case, if taken, could interfere with or be inconsistent with the Parent's or Purchaser's obligations under this Agreement or could be reasonably expected to significantly impede the completion of the transactions contemplated by this Agreement; or (xvii) enter into any agreement with respect to any of the foregoing.

### **Section 5.4 Covenants of Parent Regarding the Performance of Obligations**

Parent shall, and shall cause Purchaser to, perform all obligations required to be performed by Parent or Purchaser under this Agreement, co-operate with Vendor in connection therewith, and shall use commercially reasonable efforts to do or cause to be done all such further acts and things as may be necessary or desirable in order to

consummate and make effective, as soon as reasonably practicable, the transactions contemplated in this Agreement. Without limiting the generality of the foregoing, Parent shall and, where applicable, shall cause Purchaser and the Purchaser Subsidiaries to:

- (a) apply for and use commercially reasonable efforts to: (i) prior to the date of the meeting, obtain the conditional approval to the listing of the Consideration Shares on the TSX (subject only to the payment of fees and filing of customary required documents); and (ii) obtain the final approval of the TSX to have the Consideration Shares listed and posted for trading on the TSX prior to the Closing Date;
- (b) apply for and use commercially reasonable efforts to obtain all Key Regulatory Approvals relating to Purchaser, Parent or any of the Parent Subsidiaries and, in doing so, keep Vendor reasonably informed as to the status of the proceedings related to obtaining the Key Regulatory Approvals, including providing Vendor with copies of all related applications and notifications in draft form (except where such material is confidential in which case it will be provided (subject to applicable Laws) to Vendor's outside counsel on an "external counsel" basis), in order for Vendor to provide its comments thereon which shall be given due and reasonable consideration;
- (c) use commercially reasonable efforts to obtain as soon as practicable following execution of this Agreement all third party consents, approvals and notices relating to Purchaser, Parent or any of the Parent Subsidiaries required under any of the material Contracts, including all Key Third Party Consents;
- (d) defend all lawsuits or other legal, regulatory or other proceedings against Purchaser, Parent or any of the Parent Subsidiaries challenging or affecting this Agreement or the consummation of the transactions contemplated hereby; and
- (e) take all necessary actions such that at the Closing Time, two nominees of Vendor agreed to by Vendor and Parent prior to the Closing Date (the "**Vendor Nominees**") shall be appointed to the Parent Board and shall be nominated for re-election to the Parent Board at, and included in the meeting materials for, the first annual general meeting of Parent following the Closing Date. At the Closing Time and at the time of nomination for re-election, the Parent Board will be comprised of no more than 9 directors (including the Vendor Nominees). If the Closing Date occurs, this Section 5.4(e) shall survive the termination of this Agreement and the obligations of Parent may be enforced by the beneficiaries thereof.



## **Section 5.5 Mutual Covenants**

Each of the Parties covenants and agrees that, except as contemplated in this Agreement, during the period from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms:

- (a) it shall, and shall cause its subsidiaries to, use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set forth in Article 7 to the extent the same is within its control and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to complete the transactions contemplated by this Agreement, including using commercially reasonable efforts to: (i) obtain all Key Regulatory Approvals required to be obtained by it; (ii) effect all necessary registrations, filings and submissions of information requested by Governmental Entities required to be effected by it in connection with this Agreement, including reasonable undertakings with the Governmental Entities in order to secure the Key Regulatory Approvals or such other consents from third parties as may be necessary including in respect of the applicable steps contemplated in the Pre-Closing Reorganization; (iii) oppose, lift or rescind any injunction or restraining order against it or other order or action against it seeking to stop, or otherwise adversely affecting its ability to make and complete, the transactions contemplated by this Agreement; and (iv) co-operate with the other Parties in connection with the performance by it and its subsidiaries of their obligations hereunder; in addition, subject to the terms and conditions of this Agreement, none of the Parties shall knowingly take or cause to be taken any action which would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby; and
- (b) it shall not take any action, refrain from taking any commercially reasonable action, or permit any action to be taken or not taken, which is inconsistent with this Agreement or which would reasonably be expected to, individually or in the aggregate, materially delay or materially impede the completion of the transactions contemplated by this Agreement.

## **Section 5.6 Access for Due Diligence**

- (1) Subject to applicable Law, during the period from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms, Vendor shall: (i) upon reasonable notice, permit Purchaser and Parent and each of its respective employees, agents, counsel, accountants, lenders or other representatives to have reasonable access during normal business hours to (A) the premises of any Purchased Corporation, (B) the Corporation Properties, (C) the assets of the Purchased Corporations, (D) all material Contracts to which a Purchased Corporation is a party, and (E) the senior personnel of any Purchased Corporation, so long as the access does not unduly

interfere with the ordinary conduct of business of the Purchased Corporation; and (ii) furnish to Purchaser and Parent and each of its respective employees, agents, counsel, accountants, lenders or other representatives such financial and operating data and other information with respect to any Purchased Corporation as Purchaser from time to time reasonably requests. No investigations made by or on behalf of Purchaser or Parent, whether under this Section 5.6 or any other provision of this Agreement or any Ancillary Agreement, will have the effect of waiving, diminishing the scope of, or otherwise affecting any representation or warranty made in this Agreement or any Ancillary Agreement.

- (2) Subject to applicable Law, during the period from the date of this Agreement until the earlier of the Closing Time and the time that this Agreement is terminated in accordance with its terms, Parent shall: (i) upon reasonable notice, permit Vendor and its employees, agents, counsel, accountants, lenders or other representatives to have reasonable access during normal business hours to (A) the premises of Parent and the Parent Subsidiaries, (B) the Parent Properties, (C) the assets of Parent and the Parent Subsidiaries, (D) all material Contracts to which Purchaser, Parent or any Parent Subsidiary is a party, and (E) the senior personnel of Purchaser, Parent or any Parent Subsidiary, so long as the access does not unduly interfere with the ordinary conduct of the business of Purchaser, Parent and the Parent Subsidiaries; and (ii) furnish to Vendor and its employees, agents, counsel, accountants, lenders or other representatives such financial and operating data and other information with respect to Purchaser, Parent and the Parent Subsidiaries as Vendor from time to time reasonably requests. No investigations made by or on behalf of Vendor, whether under this Section 5.6 or any other provision of this Agreement or any Ancillary Agreement, will have the effect of waiving, diminishing the scope of, or otherwise affecting any representation or warranty made in this Agreement or any Ancillary Agreement.

#### **Section 5.7 Exclusive Dealing.**

During the Interim Period, Vendor shall not, directly or indirectly, solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any inquiries or proposals from, or enter into any agreement with, any Person (other than Purchaser and Parent) relating to any transaction involving the sale of any securities of the Corporation or any Corporation Subsidiary or the sale of the Business or any of the assets of the Corporation or any Corporation Subsidiary (other than as permitted in this Agreement) or any other business combination.

#### **Section 5.8 Pre-Closing Reorganization**

The Parties acknowledge that, in connection with the transactions contemplated herein, Vendor shall effect the Pre-Closing Reorganization substantially in the manner set forth in Schedule C. Within a reasonable period prior to the commencement of implementation of the Pre-Closing Reorganization, Vendor shall consult with Parent as to the date, timing and manner thereof, which must be acceptable to Parent. In the event Vendor shall desire to effect the Pre-Closing Reorganization in a manner other than as set forth in Schedule C,

Vendor shall provide to Parent such information concerning such proposed deviation, addition, or other modification as Parent shall request in order for Parent to provide its comments thereon, which shall be given due and reasonable consideration by Vendor, and provided Vendor shall obtain Parent's prior written consent before making any such proposed deviation, addition, or other modification.

## **ARTICLE 6**

### **ADDITIONAL COVENANTS REGARDING NON-SOLICITATION**

#### **Section 6.1      Non-Solicitation**

- (1) Except as expressly provided in this Article 6, Parent shall not, directly or indirectly, through any officer, director, employee, representative (including any financial or other advisor) or agent of Parent or of any of its subsidiaries (collectively "**Representatives**"), or otherwise, and shall not permit any such Person to:
  - (a) solicit, assist, initiate, knowingly encourage or otherwise knowingly facilitate, (including by way of furnishing or providing copies of, access to, or disclosure of, any confidential information, properties, facilities, books or records of Parent or any of its subsidiaries or entering into any form of agreement, arrangement or understanding) any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to, an Acquisition Proposal;
  - (b) enter into or otherwise engage or participate in any substantive discussions or negotiations with any Person (other than Vendor and its affiliates) regarding any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to, an Acquisition Proposal;
  - (c) accept, approve, endorse or recommend, or publicly propose to accept, approve, endorse or recommend, or take no position or remain neutral with respect to, any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to an Acquisition Proposal for a period of no more than ten (10) Business Days following the announcement of such Acquisition Proposal will not be considered to be in violation of this Section 6.1); or
  - (d) accept, approve, endorse, recommend or enter into or publicly propose to accept, approve, endorse, recommend or enter into any agreement in respect of an Acquisition Proposal (other than a confidentiality agreement permitted by and in accordance with Section 6.3).
- (2) Parent shall, and shall cause its subsidiaries and their Representatives to, immediately cease and terminate, and cause to be terminated, any solicitation, encouragement, discussion, negotiations, or other activities commenced prior to the date of this Agreement with any Person (other than Vendor) with respect to any inquiry, proposal or offer that constitutes, or may reasonably be expected to

constitute or lead to, an Acquisition Proposal, and in connection with such termination shall immediately discontinue access to and disclosure of all information, including any data room and any confidential information, properties, facilities, books and records of Parent or any of its subsidiaries, and to the extent such information has not previously been returned, promptly request the return or destruction of all copies of confidential information regarding Parent or any of the Parent Subsidiaries provided to any Person other than Vendor, using its commercially reasonable efforts to ensure that.

- (3) Parent represents and warrants that each of Parent and any of its subsidiaries has not waived any confidentiality, standstill, non-disclosure, non-solicitation, use, business purpose or similar agreement, restriction or covenant to which Parent or any of its subsidiaries is a party, and further covenants and agrees that, except where so doing would be inconsistent with the Parent Board's fiduciary duties, (i) Parent and each of its subsidiaries shall take all necessary action to enforce the provisions of any confidentiality, standstill, non-disclosure, non-solicitation, use, business purpose or similar agreement, restriction or covenant to which Parent or any of its subsidiaries is a party, and (ii) neither Parent, nor any of its subsidiaries or any of their respective Representatives have released or will, without the prior written consent of Vendor (which may be withheld or delayed in Vendor's sole and absolute discretion), release any Person from, or waive, amend, suspend or otherwise modify such Person's obligations respecting Parent or any of its subsidiaries, under any confidentiality, standstill, non-disclosure, non-solicitation, use, business purpose or similar agreement, restriction or covenant to which Parent or any of its subsidiaries is a party.

## **Section 6.2 Notification of Acquisition Proposals**

- (1) If Parent or any of its subsidiaries or any of their respective Representatives receives or otherwise becomes aware of any inquiry, proposal or offer that constitutes or may reasonably be expected to constitute or lead to an Acquisition Proposal, or any request for copies of, access to, or disclosure of, confidential information relating to Parent or any of its subsidiaries, including but not limited to information, access or disclosure relating to the properties, facilities, books or records of Parent or any of its subsidiaries, Parent shall promptly notify Vendor in writing, of:
  - (a) such Acquisition Proposal, inquiry, proposal, offer or request, including a description of its material terms and conditions, the identity of all Persons making the Acquisition Proposal, inquiry, proposal, offer or request, and copies of all material documents, correspondence or other materials received in respect of, from or on behalf of any such Person including for greater certainty, the Acquisition Proposal; and
  - (b) from time to time as reasonably required in the circumstances, any updates on the status of developments and negotiations with respect to such Acquisition Proposal, inquiry, proposal, offer or request, including any changes, modifications or other amendments to any such Acquisition

Proposal, inquiry, proposal, offer or request and shall provide to Vendor copies of all material documents, correspondence or other materials received including for greater certainty, the Acquisition Proposal, and a description of the material terms of such correspondence sent or communicated to Parent by or on behalf of any Person making any such Acquisition Proposal, inquiry, proposal, offer or request.

### **Section 6.3      Responding to an Acquisition Proposal**

- (1) Notwithstanding Section 5.4 or Section 6.1, or any other agreement between the Parties or between Parent and any other Person, including without limitation the Confidentiality Agreement, if at any time, prior to obtaining the required approvals by Parent Shareholders of the Share Issuance Resolution, Parent receives a written Acquisition Proposal, Parent may engage in or participate in discussions or negotiations with such Person regarding such Acquisition Proposal, and may provide copies of, access to or disclosure of confidential information, properties, facilities, books or records of Parent or its subsidiaries [redacted] after the date that such access or disclosure is first afforded to the Person making the Acquisition Proposal, if and only if:
  - (a) the Parent Board first determines in good faith, after consultation with its financial advisors and its outside counsel, that such Acquisition Proposal constitutes or could reasonably be expected to constitute or lead to a Superior Proposal, and, after consultation with its outside counsel, that the failure to engage in such discussions or negotiations would be inconsistent with its fiduciary duties;
  - (b) Parent has been, and continues to be, in compliance with its obligations under this Article 6;
  - (c) prior to providing any such copies, access, or disclosure, Parent enters into a confidentiality and standstill agreement with such Person substantially in the same form as the Confidentiality Agreement, provided that such confidentiality and standstill agreement may not restrict Parent, any of the its subsidiaries from complying with this Article 6;
  - (d) Parent promptly provides Vendor with [redacted] prior written notice stating Parent's intention to participate in such discussions or negotiations and to provide such copies, access or disclosure; and
  - (e) Parent promptly provides to Vendor any material non-public information concerning Parent or any of the its subsidiaries provided to such Person which was not previously provided to Vendor.

### **Section 6.4      Right to Match**

- (1) If Parent receives an Acquisition Proposal that constitutes a Superior Proposal prior to the approval of the Share Issuance Resolution by Parent Shareholders, the

Parent Board may enter into a definitive agreement with respect to such Acquisition Proposal, if and only if:

- (a) Parent has been, and continues to be, in compliance with its obligations under this Article 6;
  - (b) Parent has delivered to Vendor a written notice of the determination of the Parent Board that such Acquisition Proposal constitutes a Superior Proposal and of the intention of the Parent Board to enter into such definitive agreement (the "**Superior Proposal Notice**");
  - (c) Parent has provided Vendor a copy of the definitive agreement for the Superior Proposal and other documents supplied to Parent in connection therewith;
  - (d) [redacted] (the "**Matching Period**") have elapsed from the date that is the later of the date on which Vendor received from Parent the Superior Proposal Notice and a copy of the proposed definitive agreement for the Superior Proposal and all other materials under Section 6.4(1);
  - (e) during any Matching Period, Vendor has had the opportunity (but not the obligation), in accordance with Section 6.4(2), to offer to amend or supersede this Agreement in order for such Acquisition Proposal to cease to be a Superior Proposal;
  - (f) if Vendor has offered to amend or supersede this Agreement under Section 6.4(2), the Parent Board has determined in good faith, after consultation with Parent's outside legal counsel and financial advisors, that such Acquisition Proposal continues to constitute a Superior Proposal compared to the terms of the Transaction as proposed to be amended by Vendor under Section 6.4(2);
  - (g) the Parent Board has determined in good faith, after consultation with Parent's outside legal counsel that the failure to enter into a definitive agreement with respect to such Superior Proposal would be inconsistent with its fiduciary duties; and
  - (h) prior to entering into such definitive agreement, Parent terminates this Agreement and pays the Vendor Termination Fee pursuant to Section 9.1(i).
- (2) During the Matching Period, or such longer period as Parent may approve in writing for such purpose: (a) the Parent Board shall review any offer made by Vendor under Section 5.4(1)(e) to amend or supersede this Agreement in good faith in order to determine whether such proposal would, upon acceptance, result in the Acquisition Proposal previously constituting a Superior Proposal ceasing to be a Superior Proposal; and (b) Parent shall negotiate in good faith with Vendor to make such amendments to the terms of this Agreement as would enable Vendor to proceed with the transactions contemplated by this Agreement on such amended

terms. If the Board determines that such Acquisition Proposal would cease to be a Superior Proposal, Parent shall promptly so advise Vendor and Purchaser and the Parties shall amend this Agreement to reflect such offer made by Vendor, and shall take and cause to be taken all such actions as are necessary to give effect to the foregoing.

- (3) Each successive material amendment to any Acquisition Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by Parent Shareholders or other material terms or conditions thereof shall constitute a new Acquisition Proposal for the purposes of this Section 6.4, and Vendor shall be afforded a new [redacted] Matching Period from the date on which Vendor received the Superior Proposal Notice for the new Superior Proposal from Parent.
- (4) If Parent provides a Superior Proposal Notice to Vendor after a date that is less than [redacted] before the Meeting, Parent shall be entitled to adjourn the Meeting to a date that is not more than [redacted] after the scheduled date of the Meeting and will do so at the request of Vendor.
- (5) Nothing contained in this Article 6 shall prohibit the Parent Board from:
  - (a) responding through a directors' circular or otherwise as required by Law to an Acquisition Proposal that it determines is not a Superior Proposal, provided that Parent shall provide Vendor and its outside legal counsel with a reasonable opportunity to review and comment on drafts of the directors' circular and other related documents, and shall give reasonable consideration to any comments made by Vendor and its counsel; or
  - (b) convening a meeting of Parent Shareholders requisitioned by Parent Shareholders in accordance with the Constating Documents of Parent or taking any other action with respect to an Acquisition Proposal to the extent ordered or otherwise mandated by a court of competent jurisdiction in accordance with Law.

## ARTICLE 7 CONDITIONS OF CLOSING

### **Section 7.1      Mutual Conditions Precedent**

The obligations of the Parties to complete the transactions contemplated by this Agreement are subject to the fulfillment, on or before the Closing Date, of each of the following conditions precedent, each of which may only be waived with the mutual consent of the Parties:

- (a) the Pre-Closing Reorganization shall have been completed;
- (b) the Share Issuance Resolution shall have been approved and adopted by the Parent Shareholders at the Meeting;

- (c) no action or proceeding will be pending or threatened by any Person (other than Purchaser, Parent or Vendor) in any jurisdiction, and no order or notice will have been made, issued or delivered by any Governmental Entity, seeking to enjoin, restrict or prohibit, or enjoining, restricting or prohibiting, on a temporary or permanent basis any of the transactions contemplated by this Agreement or imposing any temporary or permanent terms or conditions on the transactions contemplated by this Agreement, the Business, the business of Purchaser or Parent or the business of Vendor, including requiring that any assets or shares be held separate or divested or requiring any form of behavioural or other remedy or otherwise limiting the right of Purchaser or Parent to conduct its business or the Business or the right of Vendor to conduct its business after the Closing Date on substantially the same basis as heretofore operated;
- (d) the TSX shall have conditionally approved for listing, subject to the payment of fees and the filing of customary required documents, the Consideration Shares;
- (e) the Key Regulatory Approvals shall have been obtained;
- (f) the Key Third Party Consents shall have been obtained;
- (g) this Agreement shall not have been terminated pursuant to Section 9.1.

## **Section 7.2 Additional Conditions for the Benefit of Purchaser and Parent.**

The completion of the transactions contemplated by this Agreement is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of Purchaser and Parent and may be waived, in whole or in part, by Purchaser and Parent in their sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of Vendor contained in this Agreement or in any Ancillary Agreement were true and correct as of the date of this Agreement and are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and Vendor shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing will not constitute a waiver by Purchaser or Parent of any of the representations and warranties of Vendor which are contained in this Agreement or in any Ancillary Agreement. Upon the delivery of such certificate, the representations and warranties of Vendor in Article 3 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (b) **Performance of Covenants.** Vendor shall have fulfilled or complied with all covenants contained in this Agreement and in any Ancillary Agreement required to be fulfilled or complied with by it at or prior to the Closing, and



Vendor shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing will not constitute a waiver by Purchaser or Parent of any of the covenants of Vendor which are contained in this Agreement or any Ancillary Agreement.

- (c) **No Vendor Material Adverse Effect.** Since the date of this Agreement, there shall have been no Vendor Material Adverse Effect or any event, occurrence or development which would be reasonably expected to have a Vendor Material Adverse Effect.
- (d) **Cash.** The Purchased Corporations shall have, in the aggregate, at least \$63,000,000 in Cash including the Purchased Corporations Cash.
- (e) **Working Capital.** The Purchased Corporations shall have, in the aggregate, net positive Working Capital.
- (f) **Deliveries.** Vendor shall deliver or cause to be delivered to Purchaser and Parent the following in form and substance satisfactory to Purchaser and Parent, acting reasonably:
  - (i) share certificates representing the Purchased Shares duly endorsed in blank for transfer, or accompanied by irrevocable security transfer powers of attorney duly executed in blank, in either case by the holders of record, together with evidence satisfactory to Purchaser and Parent that Purchaser or its nominee(s) have been entered upon the books of the Corporation as the holder of the Purchased Shares;
  - (ii) certified copies of: (i) the Constatting Documents of Vendor and each Purchased Corporation; (ii) all resolutions of the shareholders and the board of directors of each of Vendor and the Corporation approving the entering into and completion of the transactions contemplated by this Agreement and the Ancillary Agreements; and (iii) a list of the directors and officers of Vendor and each Purchased Corporation authorized to sign agreements together with their specimen signatures;
  - (iii) a certificate of status, compliance, good standing or like certificate with respect to Vendor and each Purchased Corporation issued by appropriate government officials of their respective jurisdictions of incorporation and, in the case of each Purchased Corporation, of each jurisdiction in which such Purchased Corporation carries on its business as listed in Section 3.1(a) of the Disclosure Letter;
  - (iv) the certificates referred to in Section 7.2(a) and Section 7.2(b);
  - (v) opinions of counsel to Vendor and the Purchased Corporations standard for a transaction of this nature in form and content satisfactory to Purchaser and Parent, acting reasonably, including title

opinions respecting the Corporation Properties and Corporation Mineral Rights;

- (vi) evidence that all necessary steps and proceedings as approved by counsel for Purchaser and Parent to permit all of the Purchased Shares to be transferred to Purchaser or its nominee(s) have been taken;
- (vii) a duly executed resignation effective as at the Closing of such directors and officers of any Purchased Corporation as Purchaser and Parent may specify in writing at least 3 Business Days prior to Closing;
- (viii) a release in favour of Purchaser, Parent and each Purchased Corporation in form and content satisfactory to Purchaser and Parent, acting reasonably; and
- (ix) a duly executed resignation of the auditors of the Purchased Corporations effective as at the Closing.

### **Section 7.3 Conditions for the Benefit of Vendor.**

The purchase and sale of the Purchased Shares is subject to the following conditions being satisfied on or prior to the Closing Date, which conditions are for the exclusive benefit of Vendor and may be waived, in whole or in part, by Vendor in its sole discretion.

- (a) **Truth of Representations and Warranties.** The representations and warranties of Purchaser and Parent contained in this Agreement and in any Ancillary Agreement are true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and Purchaser and Parent shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing will not constitute a waiver of the representations and warranties of Purchaser or Parent which are contained in this Agreement or any Ancillary Agreement. Upon delivery of such certificate, the representations and warranties of Purchaser and Parent in Article 4 will be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (b) **Performance of Covenants.** Purchaser and Parent shall have fulfilled or complied with all covenants contained in this Agreement and in any Ancillary Agreement required to be fulfilled or complied with by it at or prior to Closing and Purchaser and Parent shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing will not constitute a waiver by Vendor of the covenants of Purchaser and Parent which are contained in this Agreement or any Ancillary Agreement).

- (c) **No Parent Material Adverse Effect.** Since the date of this Agreement, there shall have been no Parent Material Adverse Effect or any event, occurrence or development which would be reasonably expected to have a Parent Material Adverse Effect.
- (d) **Vendor Nominees.** The Vendor Nominees shall have been appointed to the Parent Board.
- (e) **Deliveries.** Purchaser and Parent shall deliver or cause to be delivered to Vendor the following in form and substance satisfactory to Vendor, acting reasonably:
  - (i) certified copies of (i) the Constatting Documents of Purchaser and Parent, (ii) resolutions of Purchaser's board of directors and of the Parent Board approving the entering into and completion of the transactions contemplated by this Agreement and the Ancillary Agreements, and (iii) a list of Purchaser's and Parent's officers and directors authorized to sign agreements together with their specimen signatures;
  - (ii) a certificate of status, compliance, good standing or like certificate with respect to each of Purchaser and Parent issued by appropriate government official of the jurisdiction of its incorporation;
  - (iii) the certificates referred to in Section 7.3(a) and Section 7.3(b); and
  - (iv) opinions of counsel to Purchaser and Parent standard for a transaction of this nature in form and content satisfactory to the Vendor, acting reasonably, including title opinions respecting the material Parent Properties and Parent Mineral Rights.

## **ARTICLE 8 CLOSING**

### **Section 8.1      Date, Time and Place of Closing.**

The completion of the transaction of purchase and sale contemplated by this Agreement will take place at the offices of Stikeman Elliott LLP at the Closing Time on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing by the Parties.

## **ARTICLE 9 TERMINATION**

### **Section 9.1      Termination Rights.**

This Agreement may, by notice in writing given prior to or on the Closing Date, be terminated:

- (a) by mutual consent of the Parties;
- (b) by any Party if the Closing Date has not occurred by the end of the day on the Outside Date, provided that neither Parent nor Vendor may terminate this Agreement under this Section 9.1(b) if Parent or Vendor has failed to perform any one or more of its material obligations or covenants under this Agreement required to be performed at or prior to the Closing Time and the Closing Time has not occurred because of such failure;
- (c) by any Party if after the date of this Agreement any Law is enacted or made (or any Law is amended) that makes the consummation of any of the transactions contemplated by this Agreement illegal or otherwise prohibited or enjoins any of the transactions contemplated by this Agreement, and such Law (if applicable) or injunction shall have become final and non-appealable;
- (d) by any Party if approval of the Share Issuance Resolution by Parent Shareholders is not obtained at the Meeting;
- (e) by Purchaser or Parent if any of the conditions in Section 7.2 have not been satisfied as of the Closing Date and Purchaser and Parent have not waived such condition at or prior to Closing;
- (f) by Vendor if any of the conditions in Section 7.3 have not been satisfied as of the Closing Date and Vendor has not waived such condition at or prior to Closing;
- (g) by Purchaser or Parent if there has been a material breach of this Agreement by Vendor and such breach has not been cured within fifteen (15) days following notice of such breach by Purchaser or Parent;
- (h) by Vendor if there has been a material breach of this Agreement by Purchaser or Parent and such breach has not been cured within fifteen (15) days following notice of such breach by Vendor; or
- (i) by Parent if prior to the approval by the Parent Shareholders of the Share Issuance Resolution, the Parent Board authorizes Parent to enter into a written agreement (other than a confidentiality agreement permitted by and in accordance with Section 6.3(1)(c)) with respect to a Superior Proposal, provided Parent is then in compliance with Article 6 and that prior to or concurrent with such termination, Parent pays to, or to the order of, Vendor the Vendor Termination Fee by wire transfer of immediately available funds.

## **Section 9.2 Parent Termination Fee.**

Vendor hereby acknowledges and agrees that if the Closing Date has not occurred by the end of the day on the Outside Date due to a failure by Vendor to obtain the Key Regulatory Approvals in respect of the Purchased Corporations listed in Schedule A and

Purchaser or Parent terminates this Agreement pursuant to Section 9.1(b), Vendor shall pay to, or to the order of, Parent the Parent Termination Fee by wire transfer of immediately available funds within two Business Days of such termination.

### **Section 9.3 Expense Reimbursement Fee.**

Purchaser and Parent hereby acknowledge and agree that if approval of the Share Issuance Resolution by Parent Shareholders is not obtained at the Meeting and Vendor terminates this Agreement pursuant to Section 9.1(d), Parent shall pay to, or to the order of, Vendor the Expense Reimbursement Fee by wire transfer of immediately available funds within two Business Days of such termination.

### **Section 9.4 Effect of Termination.**

- (1) Each Party's right of termination under this Article is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Article limits or affects any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.
- (2) If this Agreement is terminated pursuant to Section 9.1, all obligations of the Parties under this Agreement will terminate, except that:
  - (a) each Party's obligations under Section 12.2, Section 12.3 and Section 12.5 will survive; and
  - (b) if this Agreement is terminated by a Party because of a breach of this Agreement by the other Party or because a condition for the benefit of the terminating Party has not been satisfied because the other Party has failed to perform any of its obligations or covenants under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.
- (3) Notwithstanding anything to the contrary contained in this Agreement, payment by Parent of the Vendor Termination Fee in the circumstances specified in Section 9.1(i) or the Expense Reimbursement Fee in the circumstances specified in Section 9.3 shall be the sole and exclusive remedy of Vendor in respect of any and all breaches of any representation or warranty of Purchaser or Parent or failures by Purchaser or Parent to perform any of their respective covenants under this Agreement.
- (4) Notwithstanding anything to the contrary contained in this Agreement, payment by Vendor of the Parent Termination Fee in the circumstances specified in Section 9.2 shall be the sole and exclusive remedy of Purchaser and Parent in respect of any and

all breaches of any representation or warranty of Vendor or failures by Vendor to perform any of its covenants under this Agreement.

## ARTICLE 10 INDEMNIFICATION

### Section 10.1     **Liability for Representations and Warranties.**

- (1) The representations and warranties contained in this Agreement, any Ancillary Agreement and the certificates to be delivered pursuant to Section 7.2(a) and Section 7.3(a) will survive the Closing and continue in full force and effect for a period of two years after the Closing Date, except that:
  - (a) the representations and warranties set out in Section 3.1(a), Section 3.1(b), Section 3.1(c), Section 3.1(d), Section 3.1(e), Section 3.1(f), Section 3.1(g), Section 3.1(h), Section 3.1(i), Section 3.1(j), Section 3.1(m), Section 4.1(a), Section 4.1(b), Section 4.1(d), Section 4.1(e), Section 4.1(f), Section 4.1(g), Section 4.1(h), Section 4.1(i) and Section 4.1(y) and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 7.2(a) and Section 7.3(a) will survive and continue in full force and effect without limitation of time; and
  - (b) the representations and warranties set out in Section 3.1(s) and Section 4.1(t) and the corresponding representations and warranties set out in the certificates to be delivered pursuant to Section 7.2(a) and Section 7.3(a), will survive and continue in full force and effect until 6 months after the expiration of the period (the "**tax assessment period**") during which any tax assessment may be issued by a Governmental Entity in respect of any taxation year to which such representations and warranties extend. The tax assessment period will be determined having regard to any consent, waiver, agreement or other document that extends the period during which a Governmental Entity may issue a tax assessment. A tax assessment includes any assessment, reassessment or other form of recognized document assessing liability for Taxes under applicable Law; and
  - (c) there is no limitation as to time for claims involving fraud or fraudulent misrepresentation.
- (2) No Party has any obligation or liability with respect to any representation or warranty made by such Party in this Agreement, any Ancillary Agreement or the certificates to be delivered pursuant to Section 7.2(a) and Section 7.3(a) after the end of the applicable time period specified in Section 10.1(1) except for claims relating to the representations and warranties that the Party has been notified of prior to the end of the applicable time period.

## **Section 10.2 No Effect of Knowledge.**

The right to indemnification or other remedy of any Party based on the representations, warranties, covenants and obligations contained in this Agreement, any Ancillary Agreement and the certificates to be delivered pursuant to Section 7.2(a) and Section 7.3(a), exists notwithstanding the Closing and notwithstanding any investigation or knowledge acquired prior to the Closing.

## **Section 10.3 Indemnification in Favour of Purchaser and Parent.**

- (1) Subject to Section 10.5, Vendor shall indemnify and save each of Purchaser, Parent and each Purchased Corporation harmless of and from, and shall pay for, any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under, or pursuant to:
  - (a) any breach or inaccuracy of any representation or warranty given by Vendor contained in this Agreement, any Ancillary Agreement or the certificate to be delivered pursuant to Section 7.2(a);
  - (b) any failure of Vendor or any Purchased Corporation to perform or fulfil any of its covenants or obligations under this Agreement any Ancillary Agreement;
  - (c) any failure of Vendor to transfer good and valid title to the Purchased Shares to Purchaser, free and clear of all Liens other than: (i) those restrictions on transfer, if any, contained in the Constatting Documents of the Corporation; and (ii) Liens granted by Purchaser;
  - (d) any Taxes of any Purchased Corporation relating to periods ending on or before the Closing Date, except for those Taxes disclosed in Vendor Disclosure Letter;
  - (e) [redacted]
  - (f) [redacted]
- (2) The right to indemnification under Section 10.3(1)(c), Section 10.3(1)(d), Section 10.3(1)(e) and Section 10.3(1)(f) exists notwithstanding Article 10 and notwithstanding any representation and warranty in Article 3.

## **Section 10.4 Indemnification in Favour of Vendor.**

- (1) Subject to Section 10.5, Parent shall indemnify and save Vendor harmless of and from, and shall pay for, any Damages suffered by, imposed upon or asserted against it or any of them as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any breach or inaccuracy of any representation or warranty given by Purchaser or Parent contained in this Agreement, any Ancillary Agreement or the certificate to be delivered pursuant to Section 7.3(a);
  - (b) any failure of Purchaser or Parent to perform or fulfil any of its covenants or obligations under this Agreement or any Ancillary Agreement;
  - (c) [redacted]
  - (d) [redacted]
- (2) The right to indemnification under Section 10.4(1)(c) and Section 10.4(1)(d) exists notwithstanding Article 10 and notwithstanding any representation and warranty in Article 3.

**Section 10.5 Limitations on Indemnification.**

- (1) Neither Vendor nor Parent has any obligation to make any payment for Damages for indemnification until the total of all Damages with respect to such matters exceeds \$1,000,000. Once the total of all Damages with respect to such matters exceeds \$1,000,000, Vendor or Parent, as the case may be, shall be fully liable for all such Damages, both below and above the threshold amount, up to a maximum of \$20,000,000.
- (2) For purposes of determining whether a threshold in Section 10.5(1) has been met, Damages in respect of claims by a Party for indemnification or otherwise which have not been asserted will be included and nothing will preclude or prevent such Party from entering into evidence in connection with any claim the amount of such Damages.

**Section 10.6 Notification.**

- (1) If a Third Party Claim is instituted or asserted against an Indemnified Person, the Indemnified Person shall promptly notify the Indemnifying Party in writing of the Third Party Claim.
- (2) If an Indemnified Person becomes aware of a Direct Claim, the Indemnified Person shall promptly notify the Indemnifying Party in writing of the Direct Claim.
- (3) Notice to an Indemnifying Party under this Section of a Direct Claim or a Third Party Claim is assertion of a claim for indemnification against the Indemnifying Party under this Agreement. Upon receipt of such notice, the provisions of Section 10.9 will apply to any Third Party Claim and the provisions of Section 10.8 will apply to any Direct Claim.
- (4) The omission to notify the Indemnifying Party shall not relieve the Indemnifying Party from any obligation to indemnify the Indemnified Person, unless the notification occurs after the expiration of the specified period set out in Article 10



or (and only to that extent that) the omission to notify materially prejudices the ability of the Indemnifying Party to exercise its right to defend provided in Section 10.9.

#### **Section 10.7 Limitations Periods.**

Notwithstanding the provisions of any statute, a proceeding in respect of a claim for indemnification under this Article 10 may be commenced on or before the 2<sup>nd</sup> anniversary of the date on which the Indemnifying Party was notified of the claim. Any applicable limitation period is extended or varied to the full extent permitted by Law to give effect to this Section 10.7.

#### **Section 10.8 Direct Claims.**

- (1) Following receipt of notice of a Direct Claim, the Indemnifying Party has 60 days to investigate the Direct Claim and respond in writing. For purposes of the investigation, the Indemnified Person shall make available to the Indemnifying Party the information relied upon by the Indemnified Person to substantiate the Direct Claim, together with such other information as the Indemnifying Party may reasonably request.
- (2) If the Indemnifying Party disputes the validity or amount of the Direct Claim, the Indemnifying Party shall provide written notice of the dispute to the Indemnified Person within the 60 day period specified in Section 10.8(1). The dispute notice must describe in reasonable detail the nature of the Indemnifying Party's dispute. During the 30 day period immediately following receipt of a dispute notice by the Indemnified Person, the Indemnifying Party and the Indemnified Person shall attempt in good faith to resolve the dispute. If the Indemnifying Party and the Indemnified Person fail to resolve the dispute within that 30 day time period, the Indemnified Person is free to pursue all rights and remedies available to it, subject only to this Agreement. If the Indemnifying Party fails to respond in writing to the Direct Claim within the 60 day period specified in Section 10.8(1), the Indemnifying Party is deemed to have agreed to the validity and amount of the Direct Claim and shall promptly pay in full the amount of the Direct Claim to the Indemnified Person.

#### **Section 10.9 Procedure for Third Party Claims.**

- (1) Subject to the terms of this Section, upon receiving notice of a Third Party Claim, the Indemnifying Party may participate in the investigation and defence of the Third Party Claim and may also elect to assume the investigation and defence of the Third Party Claim.
- (2) Except as contemplated in Section 9.9(3), the Indemnifying Party may not assume the investigation and defence of a Third Party Claim if:
  - (a) it relates to Taxes of the Indemnified Person, nor may the Indemnifying Party participate in the investigation and defence of such a claim;

- (b) the Indemnifying Party is also a party to the Third Party Claim and the Indemnified Person determines in good faith that joint representation would be inappropriate;
  - (c) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend the Third Party Claim and provide indemnification with respect to the Third Party Claim;
  - (d) in the reasonable judgement of the Indemnified Person, the estimated amount of likely Damages in connection with such claim is greater than the unused portion of the maximum liability the Indemnifying Party is liable for as set out in Section 10.5(1);
  - (e) in the reasonable judgement of the Indemnified Person, such claim involves material reputational risks to the Indemnified Person; or
  - (f) the Indemnifying Party does not unconditionally acknowledge in writing its obligation to indemnify and hold the Indemnified Person harmless with respect to the Third Party Claim;
- (3) In order to assume the investigation and defence of a Third Party Claim, the Indemnifying Party must give the Indemnified Person written notice of its election within 15 days of Indemnifying Party's receipt of notice of the Third Party Claim.
- (4) If the Indemnifying Party assumes the investigation and defence of a Third Party Claim:
- (a) the Indemnifying Party shall pay for all costs and expenses of the investigation and defence of the Third Party Claim except that the Indemnifying Party shall not, so long as it diligently conducts such defence, be liable to the Indemnified Person for any fees of other counsel or any other expenses with respect to the defence of the Third Party Claim, incurred by the Indemnified Person after the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim;
  - (b) the Indemnifying Party shall reimburse the Indemnified Person for all costs and expenses incurred by the Indemnified Person in connection with the investigation and defence of the Third Party Claim prior to the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim;
  - (c) the Indemnified Person shall not contact or communicate with the Person making the Third Party Claim without the prior written consent of the Indemnifying Party, unless required by applicable Law;

- (d) legal counsel chosen by the Indemnifying Party to defend the Third Party Claim must be satisfactory to the Indemnified Person, acting reasonably; and
  - (e) the Indemnifying Party may not compromise and settle or remedy, or cause a compromise and settlement or remedy, of a Third Party Claim without the prior written consent of the Indemnified Person, which consent may not be unreasonably withheld or delayed.
- (5) If the Indemnifying Party (i) is not entitled to assume the investigation and defence of a Third Party Claim under Section 10.9(2), (ii) does not elect to assume the investigation and defence of a Third Party Claim or (iii) assumes the investigation and defence of a Third Party Claim but fails to diligently pursue such defence, or the Indemnified Person concludes that the Third Party Claim is not being defended to its satisfaction, acting reasonably, the Indemnified Person has the right (but not the obligation) to undertake the defence of the Third Party Claim. In the case where the Indemnifying Party fails to diligently pursue the defence of the Third Party Claim or the Indemnified Person concludes that the Third Party Claim is not being defended to its satisfaction, acting reasonably, the Indemnified Person may not assume the defence of the Third Party Claim unless the Indemnified Person gives the Indemnifying Party written demand to diligently pursue the defence and the Indemnifying Party fails to do so within 14 days after receipt of the demand, or such shorter period as may be required to respond to any deadline imposed by a court, arbitrator or other tribunal.
- (6) If, under Section 10.9(5), the Indemnified Person undertakes the investigation and defence of a Third Party Claim, the Indemnified Person may compromise and settle the Third Party claim but the Indemnifying Party shall not be bound by any compromise or settlement of the Third Party Claim effected without its consent (which consent may not be unreasonably withheld or delayed).
- (7) The Indemnified Person and the Indemnifying Party agree to keep each other fully informed of the status of any Third Party Claim and any related proceedings. If the Indemnifying Party assumes the investigation and defence of a Third Party Claim, the Indemnified Person shall, at the request and expense of the Indemnifying Party, use its reasonable efforts to make available to the Indemnifying Party, on a timely basis, those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in investigating and defending the Third Party Claim. The Indemnified Person shall, at the request and expense of the Indemnifying Party, make available to the Indemnifying Party, or its representatives, on a timely basis all documents, records and other materials in the possession, control or power of the Indemnified Person, reasonably required by the Indemnifying Party for its use solely in defending any Third Party Claim which it has elected to assume the investigation and defence of. The Indemnified Person shall cooperate on a timely basis with the Indemnifying Party in the defence of any Third Party Claim.

#### **Section 10.10 Fraud and Other Remedies.**

- (1) The rights and remedies of the Parties under this Agreement constitute the only rights or remedies a Party may have at law or in equity. Subject to Section 10.10(2), each of the Parties expressly waives and renounces any other remedies whatsoever, whether at law or in equity, which it would otherwise be entitled to as against a Party.
- (2) Nothing in this Agreement, including this Article 10, limits or restricts in any way any remedies available, or Damages payable, for claims involving fraud or fraudulent misrepresentation.

### **ARTICLE 11 POST-CLOSING COVENANTS**

#### **Section 11.1 Villeranges Permit and La Mancha Mali.**

Vendor shall devote its commercially reasonable efforts to cause its relevant subsidiary to transfer the Villeranges Permit and all of the issued and outstanding shares of La Mancha Mali to the Corporation as soon as practicable following the Closing Date.

#### **Section 11.2 Vendor VAT Receivable.**

If Purchaser or Parent receives any portion of the Vendor VAT Receivable within 60 days of the Closing Date, Parent shall, within two Business Days of receipt of same, pay to, or to the order of, Vendor an amount equal to the portion of the Vendor VAT Receivable attributable to the 55% interest in Société des Mines d'Ity S.A. held by the Corporation received, net of a hypothetical Ivorian withholding tax on dividends, by wire transfer of immediately available funds.

#### **Section 11.3 Reimbursement of Capital Gains Tax.**

If Vendor is required to pay any capital gains Tax in respect of the sale to Purchaser of the 55% interest in Société des Mines d'Ity S.A. held by the Corporation (the "**Capital Gains Tax**"), Parent shall pay to, or to the order of, Vendor an amount equal to the Capital Gains Tax up to a maximum of €600,000 by wire transfer of immediately available funds within 10 Business Days of receipt of notice from Vendor that the Capital Gains Tax has become payable, provided, however, if Vendor receives a refund for all or any portion of the Capital Gains Tax paid, Vendor shall pay to, or to the order of Parent, an amount equal to such refund within 10 Business Days of receipt of such refund by wire transfer of immediately available funds.

#### **Section 11.4 Access to Books and Records.**

For a period of 6 years from the Closing Date, Purchaser or Parent shall retain all original accounting books and records relating to any Purchased Corporation that are part of the books and records existing on the Closing Date that relate to the 2 year period prior to the Closing Date, but Purchaser and Parent shall not be responsible or liable to Vendor for

or as a result of any accidental loss or destruction of or damage to any such Books and Records. So long as any such Books and Records are retained by Purchaser or Parent pursuant to this Agreement, Vendor shall have the reasonable right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of such Purchased Corporation. Purchaser and Parent shall have the right to have its representatives present during any such inspection.

#### **Section 11.5 Vendor Confidentiality.**

After the Closing, Vendor shall keep confidential all information in its possession or under its control relating to any Purchased Corporation and the Business, unless such information is or becomes generally available to the public other than as a result of a disclosure by Vendor in violation of this Agreement subject to any obligation of Vendor under any applicable Law.

#### **Section 11.6 Further Assurances.**

From time to time after the Closing Date, each Party shall, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased Shares to Purchaser and carry out the intent of this Agreement and any Ancillary Agreement.

### **ARTICLE 12 MISCELLANEOUS**

#### **Section 12.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement or any Ancillary Agreement (each a "**Notice**") must be in writing, sent by personal delivery, courier, facsimile or email and addressed:

- (a) to Purchaser and Parent at:

Monte-Carlo Palace, Bureau 76  
7 Boulevard des Moulins  
98000 Monaco

Attention: Morgan Carroll  
Telephone: +377 9798 7130  
Facsimile: +377 9798 7131  
Email: mcarroll@endeavourmining.com

- (b) to Vendor at:

1 Boulevard de la Foire, L-1528  
Luxembourg  
R.C.S. Luxembourg: B 164.842

Attention: Fabio Ceccarelli  
Telephone: +352 2649 7220 and +352 6212 3370  
Facsimile: +352 2712 5062  
Email: [fabio.ceccarelli@weathertwo.com](mailto:fabio.ceccarelli@weathertwo.com) or  
[amr.ELADAWY@lamancha.com](mailto:amr.ELADAWY@lamancha.com)

A Notice is deemed to be given and received (i) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (ii) if sent by facsimile or email, on the date of transmission if it is a Business Day and the transmission was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed.

## **Section 12.2 Brokers.**

Vendor shall indemnify and save harmless Purchaser, Parent and each Purchased Corporation from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for Vendor or any Purchased Corporation. Parent shall indemnify and save harmless Vendor from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for Purchaser or Parent. These indemnities are not subject to any of the limitations set out in Article 10.

## **Section 12.3 Announcements.**

No press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated in this Agreement (a "**Public Statement**") may be made prior to Closing except with the prior written consent and joint approval of the Parties, or if required by Law or a Governmental Entity. Where the Public Statement is required by Law or a Governmental Entity, the Party required to make the Public Statement will use its commercially reasonable efforts to obtain the approval of the other Parties as to the form, nature and extent of the disclosure. After the Closing, any Public Statement by Vendor may be made only with the prior written consent and approval of Parent unless the Public Statement is required by Law or a Governmental Entity, in which case Vendor shall use its commercially reasonable efforts to obtain the approval of Parent as to the form, nature and extent of the disclosure.

Notwithstanding the foregoing, the Parties acknowledge and agree that: (i) Parent will issue a press release with respect to this Agreement promptly following the execution of this Agreement, the text of such announcement to be in a form approved by each of Parent and Vendor in advance, acting reasonably and without delay; and (ii) Parent will be required pursuant to applicable Securities Laws to file this Agreement, the Ancillary Agreements and a material change report respecting the transactions contemplated by this

Agreement on the System for Electronic Document Analysis and Retrieval ("SEDAR"). Vendor hereby consents to the disclosure of this Agreement through the issuance of a press release promptly following the execution of this Agreement and the filing of this Agreement on SEDAR.

#### **Section 12.4 Third Party Beneficiaries.**

Except as otherwise provided in Section 10.3, the Parties intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties. Except for the Indemnified Persons, no Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person, including any Indemnified Person.

#### **Section 12.5 Expenses.**

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses incurred in connection with this Agreement, the Ancillary Agreements and the transactions contemplated by them. The fees and expenses referred to in this Section are those which are incurred in connection with the negotiation, preparation, execution and performance of this Agreement, and the transactions contemplated by this Agreement, including the fees and expenses of legal counsel, investment advisers and accountants.

#### **Section 12.6 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Parties.

#### **Section 12.7 Waiver.**

No waiver of any of the provisions of this Agreement or any Ancillary Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

#### **Section 12.8 Non-Merger.**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on and will survive the Closing. Notwithstanding the Closing or any investigation made by or on behalf of any Party, the covenants, representations and warranties will continue in full force and effect. Closing will not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

#### **Section 12.9 Entire Agreement.**

This Agreement, together with the Ancillary Agreements, constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement or any Ancillary Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Ancillary Agreements. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any Ancillary Agreement, the provisions of this Agreement will govern.

#### **Section 12.10 Successors and Assigns.**

- (1) This Agreement becomes effective only when executed by the Parties. After that time, it will be binding upon and enure to the benefit of their Parties and their respective successors and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party.

#### **Section 12.11 Injunctive Relief**

The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions and other equitable relief to prevent breaches of this Agreement, any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief hereby being waived.

#### **Section 12.12 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

#### **Section 12.13 Governing Law.**

- (1) This Agreement is governed by and will be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.



- (2) Each Party irrevocably attorns and submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto (and appellate courts therefrom) and waives objection to the venue of any proceeding in such court or that such court provides an inappropriate forum.

**Section 12.14 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

**[Remainder of page intentionally left blank. Signature pages follow.]**

**IN WITNESS WHEREOF** the Parties have executed this Share Purchase Agreement.

**LA MANCHA HOLDING S.ÀR.L.**

By: "Sebastien de Montessus"  
Authorized Signing Officer

**ENDEAVOUR RESOURCES INC.**

By: "Neil Woodyer"  
Authorized Signing Officer

**ENDEAVOUR MINING CORPORATION**

By: "Neil Woodyer"  
Authorized Signing Officer

## **Schedule A – Key Regulatory Approvals**

*Key Regulatory Approvals in respect of Parent:*

TSX approval.

*Key Regulatory Approvals in respect of Purchaser:*

None.

*Key Regulatory Approvals in respect of Vendor:*

None.

*Key Regulatory Approvals in respect of Purchased Corporations:*

Approval of the Minister of Mines of the Republic of Ivory Coast under applicable Laws.

## **Schedule B – Key Third Party Consents**

### *Key Third Party Consents in respect of Parent:*

Consent and waiver from UniCredit Bank AG, BNP Paribas, Société Générale, London Branch, Investec Bank plc and ING Bank N.V. (collectively, "Lenders") pursuant to the terms of a corporate loan facility agreement dated March 9, 2015 and entered into between, amongst others Endeavour Gold Corporation as borrower, Parent, the original guarantors specified therein, UniCredit Bank AG as facility agent and security agent and Lenders in respect of a revolving loan facility for \$350,000,000.

### *Key Third Party Consents in respect of Purchaser:*

Consent and waiver from UniCredit Bank AG, BNP Paribas, Société Générale, London Branch, Investec Bank plc and ING Bank N.V. (collectively, "Lenders") pursuant to the terms of a corporate loan facility agreement dated March 9, 2015 and entered into between, amongst others Endeavour Gold Corporation as borrower, Parent, the original guarantors specified therein, UniCredit Bank AG as facility agent and security agent and Lenders in respect of a revolving loan facility for \$350,000,000.

### *Key Third Party Consents in respect of Vendor:*

None.

### *Key Third Party Consents in respect of Purchased Corporations:*

None.